

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

HEARD BEFORE THE HONORABLE WILLIAM E. SMITH

## CHIEF JUDGE

(Bench Trial)

## VOLUME II

**REDACTED**

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1       20 JULY 2016 -- 9:00 A.M.

2       AMANDA WALSH, Resumes stand.

3           THE COURT: Good morning, everyone. We're ready  
4       to resume trial in the matter of John Doe versus Brown  
5       University. Ms. Walsh is still on the stand.

6           You're still under oath.

7           And, Mr. Richard, are you ready to continue your  
8       examination?

9           MR. RICHARD: Two quick housekeeping matters.

10          First, Ms. Walsh has availability to 11:00.

11          THE COURT: Okay. Good.

12          MR. RICHARD: And Ms. Perkins has called me and  
13       indicated she was on her way, so I told her to wait in  
14       the attorney's lounge.

15          Mr. Ratcliffe and I conferred about one exhibit,  
16       I believe Exhibit 25. There's a redaction error that  
17       we needed to fix on it, so we just wanted to alert the  
18       Court.

19          THE COURT: Okay. Very well. All right. Let's  
20       proceed.

21            CONTINUATION OF CROSS-EXAMINATION BY MR. RICHARD

22          Q. Good morning, Ms. Walsh.

23          A. Good morning.

24          Q. Yesterday we spoke about the complaint process.  
25       Who drafted that document?

1       A.    My screen isn't on anymore.

2       Q.    Oh, I'm sorry.

3       A.    Thank you.

4       Q.    This is Exhibit 3.

5       A.    I drafted this document.

6       Q.    Was anyone else involved in the drafting?

7       A.    The information was pulled heavily from the Sexual  
8       Assault Task Force final report from April 2015, which  
9       was drafted by I believe the Chairs of the Sexual  
10      Assault Task Force.

11           Following an initial draft of this, it was  
12       reviewed by an outside law firm in Boston, Holland &  
13       Knight, also by Brown's Office of General Counsel and  
14       the Chairs of the Sexual Assault Task Force in part of  
15       the revision process.

16       Q.    When was it finalized?

17       A.    In September of 2015.

18       Q.    On page three of the complaint process, there is a  
19       list of 14 items. What is that?

20       A.    This is a brief overview of the process. So it is  
21       a brief statement of what is contained in the following  
22       pages of the complaint process. It's intended to be  
23       used as a tool for students, their advisors, et cetera,  
24       to run through the steps quickly to see them in brief.

25       Q.    What is your role as the Title IX Program

1 Coordinator in the process?

2 A. It's to oversee these procedural steps to make  
3 sure that they're followed.

4 Q. And on page two, "Advisors"?

5 A. Yes.

6 Q. What is the role of the advisor?

7 A. The role of advisor is to accompany and assist the  
8 complainant or respondent throughout the process.

9 Q. Do you interact with the advisor?

10 A. Oftentimes advisors join meetings, telephone  
11 calls. They often reach out to me, even though we ask  
12 that the student reaches out to us directly; but  
13 advisors continue to reach out. Basically the way I  
14 respond to them is by making sure the student is  
15 included in the correspondence.

16 Q. Were there advisors in the disciplinary proceeding  
17 at issue in this case?

18 A. Yes, both Beau and Allie had advisors.

19 Q. Who was Beau's advisor?

20 A. Was Richard Ratcliffe.

21 Q. Who was Allie's advisor?

22 A. Was Laura Dunn and Myka Held.

23 Q. Who was Myka Held?

24 A. Is Laura Dunn's colleague. So they acted  
25 interchangeably for different meetings.

1       Q.    When did you learn that each student had an  
2       advisor?

3       A.    I learned that Allie had an advisor or planned to  
4       use an advisor I believe earlier on October 30th before  
5       she submitted a complaint.

6               Her advisor reached out to me with an e-mail to  
7       the effect of, I plan to submit a complaint, can you  
8       advise me about how to do that, can you provide  
9       information about how a student would do that.

10              I learned that Beau had an advisor within days  
11       of the complaint, I think before the response statement  
12       was submitted.

13              Q.    I'll go through the formal resolution process in a  
14       moment. I'd like to direct you to page six, the  
15       appeals process.

16              A.    Yes.

17              Q.    Who has the right to file an appeal?

18              A.    Both parties, both the complainant and the  
19       respondent.

20              Q.    Why is it that both parties have that right?

21              A.    Because the process is equitable to both students  
22       involved, both because that's important to the  
23       University, to Brown, and also because that's mandated  
24       by federal guidance.

25              Q.    How are appeals filed?

1       A. Appeals -- students can submit an appeal based on  
2       the grounds listed in Section (d), and they submit a  
3       statement to me as the Title IX Program Officer. Both  
4       parties can file an appeal or one party can file an  
5       appeal. That document is provided to the other student  
6       who has an opportunity to respond in writing.

7       Q. After the other student responds in writing, did  
8       you consider additional -- did you consider the  
9       possibility of allowing additional filings?

10      A. The process -- we didn't. The process is really  
11       it has to -- some of these steps have to end somewhere.  
12       This is certainly a guideline. We anticipated that  
13       there were going to be procedural requests that were  
14       outside the bounds of this document. I think our goal  
15       is to have a document that contemplates as many  
16       situations as possible, but certainly it can't  
17       contemplate all of them.

18      Q. What are the grounds for an appeal?

19      A. The grounds are substantial procedural error or  
20       discovery of new evidence that wasn't available at the  
21       time of the hearing.

22      Q. While drafting this document, did you consider  
23       other possible grounds?

24      A. Some of those were -- certainly other grounds were  
25       considered both by the Sexual Assault Task Force and in

1 drafting this, but these were the two grounds that we  
2 settled on.

3 Q. What other grounds did you consider in your  
4 drafting?

5 A. We considered the potential of a third ground  
6 being something to the effect of against the weight of  
7 the evidence but determined that that would invite an  
8 appeal in probably nearly every case from the student  
9 who didn't have a favorable result.

10 Q. And if an appeal is on a procedural ground, what  
11 happens if the appeal is granted?

12 A. That depends on what -- the rationale for granting  
13 the appeal. So, for example, if the appeal is granted  
14 on new evidence, that new evidence is sent back to the  
15 original panel who considers that in conjunction with  
16 the other information they had available to them during  
17 the hearing process and in the investigation report.

18 If it's a procedural error, it will be a new  
19 panel that's convened because in order to cure the  
20 error, we would need to have a rehearing of the case.

21 Q. If it's remanded for a rehearing, is there a right  
22 to appeal after that step?

23 A. There would be a right to appeal after a rehearing  
24 if there was another ground. There would need to be,  
25 again, a substantial procedural error or new evidence

1 not reasonably available at the time.

2 Q. Focusing on the process in this case, we marked  
3 yesterday Exhibit 5?

4 A. Yes.

5 Q. Do you recognize this document?

6 A. Yes. It is Allie's complaint.

7 Q. When did you receive that?

8 A. The evening of October 30th, 2015.

9 Q. On page three of Allie's complaint, she states  
10 that she went to speak with you. Do you recall meeting  
11 with her?

12 A. Yes. I met with her in the very last days of  
13 September or the very beginning of October.

14 Q. What was the purpose of that meeting?

15 A. Following a meeting with another student, who is  
16 referenced in this case as Witness 9, Witness 9 went  
17 back and encouraged Allie to meet with me to discuss an  
18 experience that Allie had in November of 2014 that  
19 Witness 9 knew about.

20 So she had encouraged her to come and meet with  
21 me. The primary focus of the meeting was that Allie  
22 was asking questions about options available to her,  
23 resources available to her, et cetera.

24 Q. What options, if any, did you offer to Allie?

25 A. I generally go through a list of all the remedial

1 and safety measures available at Brown. So I remind  
2 students that there are SHARE advocates that are  
3 confidential resources. The chaplain's office is a  
4 confidential resource, that they can seek support at  
5 Counseling and Psych Services or CAPS.

6 I remind students that they can report to the  
7 Department of Public Safety or Providence Police or  
8 that they can file a complaint in Brown's complaint  
9 process through the Title IX Office.

10 Q. When did you reach out to Beau after receipt of  
11 the complaint?

12 A. I reached out to Beau following receipt of the  
13 complaint on Sunday, November 1st, via e-mail to  
14 arrange an in-person meeting for Monday, November 2nd.

15 Q. This is the document we marked as Exhibit 6  
16 yesterday?

17 A. Yes.

18 Q. And it's to Beau?

19 A. Yes.

20 Q. It mentions "a follow-up to our conversation."  
21 Did you meet with him?

22 A. Yes. I met with him I believe very late in the  
23 day on Monday, November 2nd. Again, I believe the  
24 meeting was started at 4:30.

25 Q. What did you discuss with Beau during that

1 meeting?

2 A. I discussed the complaint. I give the student the  
3 opportunity to review the complaint and ask questions  
4 about the process, if they have them. I also remind  
5 students that there are available support services  
6 offered, and I believe it's included in the letter.

7 So I encourage them to seek help from Student  
8 Support Services, from Counseling and Psych Services if  
9 they find that that would be helpful to them and answer  
10 any procedural questions they have about the process,  
11 trying to make sure that everybody is aware of what  
12 will happen next throughout.

13 Q. The first bullet in the letter references  
14 documents. Did you share those with Beau?

15 A. Yes. I provided Beau with a copy of Allie's  
16 complaint and supporting documentation that she  
17 provided attached to her complaint and also a copy of  
18 Brown's complaint process, again, so that he would be  
19 aware of what would happen throughout the  
20 investigation.

21 Q. Were any other documents shared?

22 A. Not at that time.

23 Q. The second and third bullets appear to relate to  
24 timeframes. What did you discuss with Beau regarding  
25 timeframes?

1       A. I indicated that in the complaint process the  
2 respondent is given five business days. Because we  
3 were meeting late in the day on Monday, out of fairness  
4 to students, I tend to not count the day that we were  
5 meeting in. So his statement would have been due on  
6 Monday, November 9th.

7               He had requested or indicated that he had an  
8 engagement, I believe it was related to mock trial, and  
9 asked for an extension. I think there was a tournament  
10 or something over the weekend and he would be  
11 traveling. So he was granted a 24-hour extension until  
12 5:00 p.m. on Tuesday, November 10th.

13               And I also reminded him that he could have an  
14 advisor throughout the process and could contact that  
15 advisor before he drafted a statement.

16       Q. The last paragraph refers to CAPS. What is CAPS?

17       A. CAPS stands for Counseling and Psychological  
18 Services, which is the counseling center, which is a  
19 confidential resource at Brown.

20       Q. Exhibit 9. We've referenced yesterday that you  
21 retained an investigator?

22       A. Yes.

23       Q. Who was that?

24       A. That is Djuna Perkins.

25       Q. Did you know Ms. Perkins prior to this engagement?

1       A. Yes. From my time at Victim Rights Law Center,  
2       she had acted as an investigator in some of the cases.  
3       She had also participated in some, or had been invited  
4       to speak at some of the same panels and conferences in  
5       Boston that I participated in. So we had a  
6       professional relationship and some mutual professional  
7       colleagues.

8       Q. The engagement letter was signed on what date?

9       A. November 4th.

10      Q. The complaint process at page three under  
11       "Investigation" indicates that you will appoint an  
12       advisor. Why did you hire an external advisor?

13      A. At that time --

14      Q. Excuse me. Investigator. My mistake.

15      A. At that time Brown did not have an internal  
16       investigator. Jessica Katz was hired and started on  
17       November 30th, 2015. And so this was happening about a  
18       month before that.

19           Also, throughout this academic year, for cases  
20       involving sexual assault specifically, we had engaged  
21       or had planned to engage and did throughout the year  
22       engage an external investigator because we knew those  
23       cases may be more complicated and time-consuming.

24      Q. Was this Ms. Perkins' first engagement with the  
25       Title IX Office?

1       A.    Yes.

2       Q.    When you engaged her, what did you tell her about  
3       the scope of work?

4       A.    When I engaged her, I referenced a conversation  
5       that we had back in the spring of 2015 where I met with  
6       a series of potential investigators to discuss Brown's  
7       process, what their role would be in the process, what  
8       their experience was. I requested sample reports,  
9       resumes, references, et cetera.

10           So we revisited that conversation now in light  
11       of the fact that the complaint process had been  
12       finalized. I provided her with a copy of the complaint  
13       process so that she had an understanding of what her  
14       role would be, answered any questions she had, and  
15       indicated what the policy that she would be reviewing  
16       would be, which was a '14-'15 Code.

17       Q.    When you reviewed the complaint process with  
18       Ms. Perkins, did you review the discretion that the  
19       investigator has under the process?

20       A.    Yes, extensively. I am always cautious to make  
21       sure that the investigator understands the distinction  
22       between my role and their role. And because the  
23       investigator is doing the investigation and is meeting  
24       with the witnesses, et cetera, there's a lot that falls  
25       within their discretion.

1 Q. Is there any limit on that discretion?

2 A. The limit on that discretion would be if they did  
3 something that was outside of the complaint process at  
4 Brown. So if their discretion doesn't exceed the  
5 bounds that would be violative of Brown's process or  
6 policy, and it's prescriptive in the complaint process  
7 where their discretion lies.

8 Q. Who monitors that boundary?

9 A. I do in my capacity as the Title IX Program  
10 Officer.

11 Q. What is your role as the investigation is ongoing?

12 A. My role is fairly limited. I am a resource for  
13 students who might have procedural questions. I'm also  
14 a resource for the investigator who might have  
15 procedural questions.

16 Sometimes questions might implicate both an  
17 investigator's discretion and Brown's complaint  
18 process, so I would be available to answer those. And  
19 oftentimes students are making requests of the  
20 investigator for extensions, et cetera, that are really  
21 more appropriate for the Title IX Program Officer.

22 But for some investigations, my role is very  
23 limited and I have minimal contact with the students  
24 and the investigator throughout that process.

25 Q. If we could step back for one minute. When you

1       met with Beau on November 2nd, was that the first time  
2       that you had met with him?

3       A.    It wasn't. I had met with him once in earlier  
4       October. I'm not sure exactly of the date, but at some  
5       point in early to mid-October I had met with him once.

6       Q.    What did you discuss with Beau during that  
7       first meeting?

8       A.    Beau requested the meeting with me. He was -- it  
9       was following a meeting he had with a dean, Dean Maria  
10       Suarez, in Student Support. She had provided him with  
11       a no-contact order or two no-contact orders requested  
12       by Allie and Witness 9, and Beau had received  
13       information that those no-contact orders were at my  
14       request. And so he -- which they were not, but he had  
15       thought that they were and wanted to meet with me.

16           So he came to my office, and he wanted to  
17       discuss a bit about his relationship with Allie and  
18       Witness 9. I told him at that time there was no  
19       complaint submitted, the Title IX Office wasn't  
20       conducting an investigation, that we didn't request the  
21       no-contact order and that those are both implemented  
22       and enforced by Student Life.

23       Q.    When you retained the investigator, did you set a  
24       timeframe for the completion of the investigation?

25       A.    Our complaint process aims to conform with the

1       2011 Dear Colleague Letter, which says that a typical  
2 investigation will last 60 days. I tried to encourage  
3 and maintain the timelines as they're outlined; but for  
4 the investigation, once the response is received, there  
5 is very few timelines for the witness interviews and  
6 the report drafting.

7           This case I knew was going to be a little bit  
8 longer because it fell both over the Thanksgiving  
9 break, the winter break, and students aren't on campus  
10 largely for the entire month of January.

11       Q. And the timeframe is referenced in the complaint  
12 process as Section IX; correct?

13       A. Correct.

14       Q. You mentioned the scheduling due to the breaks.  
15 Was it your goal to complete this process by a  
16 particular date?

17       A. Throughout, I continued to encourage. My aim was  
18 to have -- there was some indications that I have with  
19 Djuna Perkins where I had asked her please complete the  
20 investigation by mid to late January, I believe, and I  
21 had hoped that it would be completed at that time.

22           It was held up a bit because we always  
23 prioritize a student's ability to be interviewed in  
24 person by the investigator should they choose to.  
25 Because this process allows the investigator to make

1       credibility assessments, it's important that if a  
2       student wants to appear in person versus by telephone  
3       or Skype, that we give them that opportunity.

4           In this case, I believe that Beau had elected --  
5       he had indicated to Djuna that he wanted to meet in  
6       person but wasn't on campus throughout most of January.  
7       I believe the last week in January his advisor wasn't  
8       available, so she wasn't able to meet with him from  
9       some point in December until February 2nd.

10      Q.    Between October 2nd and the start of the winter  
11       break, did you meet with Beau?

12      A.    Yes. I met with Beau on November 2nd.

13      Q.    I misspoke. I meant to say November 2nd.

14      A.    Oh, okay.

15      Q.    After the meeting on November 2nd, were there any  
16       meetings with Beau during the fall semester?

17      A.    I do not believe so, no.

18      Q.    Did you have any meetings with Allie between  
19       November 2nd and the remainder of the fall semester?

20      A.    I do not believe so, no.

21      Q.    Approximately when did the spring semester begin?

22      A.    The spring semester begins at the very end of  
23       January of 2016 (sic).

24      Q.    At the start of the spring semester, did either  
25       student contact you?

1       A. Both students, I believe, had contacted me for  
2 various either requests for updates. I remember Allie  
3 had requested an update about the status of the  
4 investigation. Beau contacted me for other procedural  
5 reasons, but I don't recall meeting with either of  
6 them.

7       Q. Exhibit 11, we referenced this yesterday, it's a  
8 full exhibit. I want to ask you a few questions about  
9 this e-mail. What is it?

10      A. This is an e-mail from me to Investigator Djuna  
11 Perkins following receipt of what's being called as the  
12 draft or initial investigation report.

13      Q. Prior to your receipt of this e-mail, had you been  
14 in contact with Ms. Perkins?

15      A. Yes. When she would meet with students on campus  
16 to interview them, she would come in and provide status  
17 updates and meet with me briefly during kind of those  
18 times to let me know the status of the investigation.

19      Q. And the first paragraph mentions revisions that  
20 you made?

21      A. Yes.

22      Q. And they're called technical and other  
23 substantive. What's the difference between the  
24 technical and substantive revisions you made?

25      A. The technical -- when I wrote "technical," I was

1       really referring to -- I didn't really change the  
2       meaning of what she drafted.

3           So, for example, I think she called Brown's  
4       Department of Public Safety something slightly  
5       different. She was still referring to DPS, and I just  
6       changed it to indicate what we actually call the  
7       Department of Public Safety at Brown.

8           "Substantive" meaning it would -- it changed the  
9       meaning of the edit that I made, and so that's why I  
10       indicated -- I wanted to make sure she was comfortable  
11       with any proposed changes.

12       Q.    What are you addressing in the second paragraph?

13       A.    I'm addressing the -- I'm responding to her e-mail  
14       below where she is discussing Beau's -- what she refers  
15       to as Beau's conspiracy claim and that she felt that  
16       she had to put in more information about prior bad acts  
17       in order to provide context to the conspiracy claim  
18       perhaps than she would have otherwise if he hadn't put  
19       forward the conspiracy claim.

20       Q.    What was your understanding of the conspiracy  
21       claim?

22       A.    My understanding of his conspiracy claim was that  
23       a witness had overheard a conversation in the Ratty,  
24       which is a dining hall at Brown, and that something  
25       about the conversation between two students who the

1       witness believed to be Allie and Witness 9 indicated  
2       that they were trying to -- they were out to get him or  
3       they were trying to get him in trouble, have him suffer  
4       some sort of consequences, conspiring against him.

5       Q.     When did you first learn of this conspiracy claim?

6       A.     I don't recall learning of it before this  
7       February 29th e-mail and the attached report.

8       Q.     Exhibit 12, is this the red-line attachment  
9       referenced in Exhibit 11?

10      A.     Yes.

11      Q.     Who made these revisions?

12      A.     I did.

13      Q.     The relevant policy sections, why did you strike  
14       this certain language?

15      A.     I did because the offense alleged in the complaint  
16       occurred in November 2014; and, therefore, the  
17       2014-2015 Code of Student Conduct would apply, and I --  
18       and the Offense VII(a) and VII(b) wouldn't have  
19       applied.

20           I removed the consent and coercion definitions  
21       because I felt it would have indicated to a panel that  
22       they were required to review those, which they weren't  
23       because those definitions weren't contained in the  
24       '14-'15 Code, but there were no definitions for those  
25       terms in the '14-'15 Code.

1 Q. Did you discuss this revision with Ms. Perkins?

2 A. Yes. She had been given the '14-'15 Code and knew  
3 that that's the policy that we were using. I believe  
4 that she -- we provide a template for our -- a sample  
5 investigation report to our investigators who are  
6 external so that visually the reports will look the  
7 same, and I believe that she was just using that  
8 information contained in a sample template.

9 Q. Page 27, there's a comment that says WA-3. Does  
10 the "WA" refer to Walsh?

11 A. Yes.

12 Q. Is that your comment?

13 A. Yes.

14 Q. And do you recall why you made this comment?

15 A. Could you just zoom in a little bit?

16 Q. Is that better?

17 A. Yes. Yes. So one is, I made the comment because  
18 Witness 9 had not elected to submit a complaint, and  
19 this was giving information about conversations that I  
20 had with Witness 9 and about Witness 9's experience in  
21 a report that involved two other students. And I  
22 didn't -- I was inquiring with the investigator, Djuna  
23 Perkins, why she thought this was relevant because it's  
24 within her discretion; but if she didn't believe that  
25 it was relevant, then I thought it would be something

1       that would be in my territory to remove because there  
2       were some FURPA implications in my mind.

3       Q.     Page 28, another comment. WA-4, is that your  
4       comment?

5       A.     Yes.

6       Q.     Do you recall why you made this comment?

7       A.     Yes. So I understood Beau had a right to put  
8       forward a defense. And in this case, his defense was  
9       that this was a conspiracy between the students and  
10       this was fabricated in some way.

11           So I understood why it was included. He has a  
12       right to put that forward, and I think that that's an  
13       important part of our process.

14           What I supposed I was confused about is the  
15       information that was contained wasn't accurate. Like I  
16       said, there was no suit between Beau and the University  
17       at the time that this October 30th, 2015, conversation  
18       happened. So I was just ensuring that -- I was  
19       concerned about the accuracy of the statement.

20       Q.     Were you concerned about character evidence in  
21       this draft?

22       A.     I am concerned about character evidence to the  
23       extent that it violates our policy. In this draft,  
24       Djuna had given instructions that the panel would  
25       review about the purpose for which they would consider

1 that information that I felt like were appropriate.

2 I also understood that, again, Beau put forward  
3 this conspiracy defense, and that is well within his  
4 right to do that. But as a result, Djuna had felt that  
5 she needed to put in this additional information, and  
6 it really would be inappropriate and slightly violative  
7 of Title IX and our responsibility to be equitable if  
8 Djuna or I would be advising Beau to remove this  
9 defense in order to remove the character evidence.

10 Students bring forward the information that they  
11 want, and that's included in the report unless, again,  
12 it's a violation of the complaint process.

13 Q. And under the complaint process, is a report  
14 shared with the students?

15 A. Yes. So the students receive a copy of the  
16 investigator's report before a panel sees it and the  
17 reason being that we want them to have an opportunity  
18 to respond before who ultimately becomes the  
19 decision-making panel is able to review it.

20 MR. RICHARD: One moment, your Honor.

21 THE COURT: That's fine.

22 (Pause.)

23 Q. We addressed yesterday that you received a  
24 communication from Attorney Dunn. Do you recall that?

25 A. Yes.

1 Q. What did that address?

2 A. Attorney Dunn submitted an e-mail with two  
3 attachments, one that was a letter directed to me that  
4 effectively was a second response to the initial report  
5 that was received by Allie, and then the other  
6 attachment was her response to the report as outlined  
7 in the complaint process.

8 Q. Exhibit 16, do you recognize this document?

9 A. I do. That is an e-mail from me to Djuna Perkins  
10 after receiving the correspondence from Laura Dunn, and  
11 I did this because I was trying to -- again, this was  
12 in the investigator's discretion. The information that  
13 was contained in both the letter and the response was  
14 largely in the investigator's discretion, and so I  
15 wanted Djuna to address those points. And I ideally  
16 felt like she could probably address all of them and I  
17 may not need to respond to Laura Dunn.

18 Q. Exhibit 17. Do you recognize this document?

19 A. Yes. This is an e-mail from the investigator,  
20 Djuna Perkins, to Beau; his advisor, Richard Ratcliffe,  
21 and copying me that was indicating that the report was  
22 finalized and giving him a copy of the finalized report  
23 and exhibits on March 12th.

24 Q. After the report is finalized, what happens next  
25 in the process?

1       A. Once the report is finalized, we work to convene a  
2 panel, a three-member panel, to review the report and  
3 ultimately have the hearing.

4                   So the next step is, as part of convening that  
5 panel, I vet for conflicts with the students two ways.  
6 So first I provide the names of potential panelists to  
7 students, ask if they know them. I do it this way to  
8 protect their privacy before I send their names to  
9 administrators or faculty members or other students.

10                  So I ask, do you have a relationship or a  
11 conflict with any of these potential panelists. Once  
12 those are cleared, I send their names to the potential  
13 panelists and assign a panel and begin the scheduling  
14 process.

15       Q. Exhibit 24, what is that?

16       A. These are my notes from the hearing from April  
17 14th, 2016, on the case related to Beau and Allie.

18       Q. So the report was finalized as of March 12th;  
19 correct?

20       A. Yes.

21       Q. The hearing occurred a month later on April 14th?

22       A. Yes.

23       Q. And what happened during that month?

24       A. During that month, we worked to schedule this  
25 because we have three members in a panel, the panel

1 Chair, the two students and their advisors. It's  
2 complicated to schedule a period of time that's  
3 sufficient to have the hearing. I know for one of  
4 these weeks, for example, Attorney Ratcliffe had said  
5 that he was unable for a week.

6 So we try to accommodate the students and their  
7 advisors to the extent that we can, and this was the  
8 earliest date that we were able to identify.

9 Q. Who were the panelists?

10 A. The panelists were Besenia Rodriguez, who is a  
11 dean in the college; Kate Trimble, who is a deputy  
12 director of Brown's Swearer Center; and an  
13 undergraduate student at the time, Kimberley Charles,  
14 who was a senior.

15 Q. Were there any males considered?

16 A. There were -- all of the males were considered,  
17 all of the males who had been trained and were part of  
18 the Title IX Council. The student participated -- one  
19 of the male students participated in mock trial and,  
20 therefore, knew both of the students and likely knew  
21 more information than was contained in the report.

22 One of the other students had a friendly  
23 relationship with Allie. They served on a board of  
24 some sort together. And one of the other males was the  
25 Director of Student Activities, Tim Shiner, and he was

1 aware of, again, a lot of details that, out of fairness  
2 to Beau, he couldn't serve on the panel. In his  
3 capacity, we had met with a lot of the members of mock  
4 trial; and, again, he knew more details than perhaps  
5 were contained in the report.

6 Q. How do you select the panelists from those who do  
7 not have a conflict?

8 A. I tried to put together a panel that's  
9 representative of the Brown community to the greatest  
10 extent possible, so age, gender, professional capacity  
11 and also their own time capacity. And so that's how I  
12 come up with potential panelists and then start the  
13 conflict process.

14 Q. Ms. Charles was a student?

15 A. Yes.

16 Q. Why did you put a student on the panel?

17 A. Under the complaint process, every case involving  
18 a student respondent will have a student on the panel.

19 Q. What is your role at the panel hearing?

20 A. My role at the panel hearing is very limited. I  
21 am there to answer procedural questions that are  
22 outside of the norm.

23 So the Chair is really the one who is overseeing  
24 the decorum and the conduct of the proceedings, but  
25 sometimes there are questions that are procedural in

1       nature, again, that are outside of the hearing itself  
2       or haven't been contemplated. So my role there is to  
3       ensure consistency among all of the hearings and also  
4       to take notes, to keep a record.

5       Q.     Who was the Title IX Council Chair?

6       A.     It's Gretchen Schultz.

7       Q.     Is she employed at Brown?

8       A.     She is a professor -- a tenured professor in  
9       French studies.

10      Q.     Who selected her to be the Chair?

11      A.     She is appointed by the President and the Dean of  
12       the Faculty.

13      Q.     The complaint process at page five discusses the  
14       role of the Chair. What are the Chair's  
15       responsibilities to prepare for the hearing?

16      A.     The Chair reviews the materials in just the same  
17       way that the panelists would. If there are requests by  
18       students or panelists to hear from particular witnesses  
19       that are identified in the report, they would make that  
20       request to the Chair.

21           So any procedural decisions leading up to the  
22       panel that impact the panel would be made by Gretchen  
23       Schultz. So leading up to the hearing, that's her  
24       role.

25      Q.     Before the hearing, is any information given to

1 the panelists?

2 A. Prior to the hearing, the panelists have at least  
3 five business days to review all of the material. So  
4 that would include the report, the attached exhibits.  
5 They've been given numerous copies of the relevant  
6 policies and processes, but I make sure that they're  
7 aware of those and provided those as well. And  
8 oftentimes I highlight particular sections, again, to  
9 remind them of what their role as a panelist would be.

10 Q. Would they received the investigative report?

11 A. Yes.

12 Q. How voluminous was the investigative report in  
13 this case?

14 A. This was a very detailed investigative report. I  
15 believe the final version was 29 single-spaced pages.  
16 There were extensive footnotes, references to other  
17 materials, and then the full appendix included I think  
18 a hundred pages of text messages. It was voluminous,  
19 certainly.

20 Q. On April 14th, you attended the hearing?

21 A. Yes.

22 Q. Why did you take these notes?

23 A. Well, we are required under the guidance to keep a  
24 record of the hearing, and this -- in my role it's  
25 certainly my responsibility to do that, and also just

1 -- I think it's important for the Title IX Office to  
2 have a record of the hearing as well.

3 Q. Is there a recording?

4 A. There is no audio recording, no.

5 Q. The document, Exhibit 24, your notes indicate the  
6 panel convened at 8:15 in the morning?

7 A. Yes.

8 Q. Where was the hearing held?

9 A. It was in a building on campus called Horace Mann.

10 Q. What time did you arrive?

11 A. Probably like 7:30.

12 Q. Between approximately 7:30 and 8:15, what did you  
13 do?

14 A. I set up the room by laying out the documents for  
15 the panelists, laying out the documents for the Chair.  
16 I make a laptop available with the exhibits if they  
17 want an easier way to search them. Breakfast gets  
18 delivered, coffee, things like that. So I handle some  
19 of the logistical details and generally set up a white  
20 noise machine outside the room, things like that, to  
21 set up the logistics of the room. I also always meet  
22 with Gretchen Schultz briefly before each panel  
23 hearing.

24 Q. Did you meet with Professor Schultz before this  
25 panel hearing?

1       A.    Yes.

2       Q.    Approximately how long was that meeting?

3       A.    She generally arrives 15 or 20 minutes early, and  
4       I would say that we probably spoke for most of that  
5       time.

6       Q.    What did you discuss?

7       A.    We discussed -- I gave her the opportunity to ask  
8       any procedural questions. We don't tend to discuss  
9       anything about the specific facts of the case, but we  
10      often discuss how the panel hearing will be run.

11           I indicate what is in her packet that is  
12      different than what is in the panel's packet. In this  
13      case, there were two items that she had that the  
14      panelists would not have, and I told her why, reminded  
15      her why.

16           One was a conduct history of the respondent,  
17      which is not provided to the panel unless they  
18      determine the respondent is responsible. Then it can  
19      be considered for sanctioning only. And the second  
20      was, I had indicated she had a copy of the '15-'16  
21      Title IX Policy and the panelists did not.

22       Q.    Why did you include the '15-'16 Title IX Policy?

23           MR. RATCLIFFE: Objection, your Honor, as to why  
24      she included it.

25           THE COURT: I think that's relevant. Overruled.

1 Go ahead.

2 A. I included the '15-'16 policy because there was no  
3 "consent" definition in the '14-'15 Code. And under  
4 the old Code, the panelists would determine --

5 MR. RATCLIFFE: Objection, your Honor. This is  
6 getting into -- I don't believe there's going to be any  
7 foundation for this. She wasn't here in '14-'15.

8 THE COURT: Overruled. I think her explanation  
9 of why she included it is very relevant. Overruled.

10 Go ahead.

11 A. So there was no "consent" definition in the  
12 '14-'15 Code. And during the '14-'15 academic year,  
13 each individual panel hearing a case like this would  
14 come to an agreement about the way they would view  
15 "consent." They would make a determination.

16 This panel would be advised by Gretchen that  
17 they would do -- it was their right to decide which  
18 "consent" definition that they would use, how they  
19 would view "consent."

20 So, therefore, I wanted to provide her with the  
21 '15-'16 as an option that the panel could consider but  
22 also wanted to be clear with Gretchen and wanted  
23 Gretchen to be clear with the panel that they were  
24 never required to use it.

25 By excluding it from their packets and including

1       it in hers, I felt like this was hopefully making that  
2       clear.

3                    MR. RATCLIFFE: Objection, your Honor.

4                    THE COURT: Overruled.

5        Q. Did you discuss during this meeting with Professor  
6        Schultz prior to 8:15, did you discuss the document  
7        itself in any way, the Title IX Policy?

8        A. Just simply that it had these definitions that the  
9        '14- '15 Code didn't have.

10      Q. And when the panel convened, Attorney Ratcliffe  
11       reviewed with you yesterday Professor Schultz's  
12       statements, which are under Roman numeral I. Did you  
13       make any statements at that time to the panel?

14      A. I did not.

15      Q. As you're -- were you making these notes as the  
16       hearing occurred?

17      A. Yes. I sit further down the table with a laptop  
18       and take the notes contemporaneously.

19      Q. After Professor Schultz gave her opening  
20       statement, what happened next?

21      A. She gives her opening statement and inquires about  
22       whether there are questions from the panelists that  
23       they would like to discuss before anybody else is in  
24       the room, and they indicated that there were none. And  
25       then the investigator, Djuna Perkins, was brought in.

1       Q. After the investigator was brought in, what  
2       happened next?

3       A. The investigator is brought in, and the panelists  
4       have the opportunity to ask questions of the  
5       investigator, clarify parts of the investigation  
6       report.

7                   During the training, I tell them any information  
8       that you do not have that you need in order to make a  
9       finding either way, you need to make sure you ask that  
10      question. So that's why the investigator was brought  
11      in, and she was asked a series of questions.

12       Q. When the investigator speaks with the panel, who  
13      else is in the room?

14       A. When the investigator speaks with the panel, it's  
15      the three panelists; the Faculty Chair, Gretchen  
16      Schultz; I am there taking the notes; and the  
17      investigator.

18       Q. Where are the students?

19       A. The students are not present in the room at that  
20      time.

21       Q. And after the panel met with the investigator,  
22      completed that process, what happened next?

23       A. The investigator leaves the room, and again the  
24      panel has an opportunity to convene. In this case,  
25      both students indicated that they would like to make

1       verbal statements, which is their right to do under the  
2       complaint process.

3           And the panel, because the complaint process  
4       doesn't dictate an order of who will speak first, the  
5       panel in this case determined that they would like to  
6       hear from the respondent.

7       Q.    And in parentheses, there's an AW. That's you,  
8       Amanda Walsh?

9       A.    Yes.

10      Q.    Is this a statement you made?

11      A.    It is. In this case, the respondent entered the  
12       room with his advisor. And, again, Gretchen goes  
13       through the role of the advisor; and Beau had asked,  
14       because he was speaking first, if he would be permitted  
15       to make a rebuttal statement.

16           And so this is the type of procedural question  
17       that I would answer, and so it indicates my response  
18       was the process doesn't permit rebuttal statements.

19           And I think they also inquired, Beau and his advisor, I  
20       think his advisor directly asked how this determination  
21       was made. And I told him that it's made by the panel,  
22       and they decided they wanted to hear from the  
23       respondent first.

24      Q.    And at the top of the page it indicates, Below is  
25       a summary of the respondent's statement?

1 A. Yes.

2 Q. When did you type that summary?

3 A. Contemporaneously as the respondent was speaking.

4 Q. And the words in the first paragraph about five  
5 lines down, "revenge plot," were those words that Beau  
6 said?

7 A. Yes.

8 Q. What do you recall him saying about a revenge  
9 plot?

10 A. I recall that he was indicating that Allie had a  
11 revenge plot against him because he wasn't interested  
12 in dating her after a consensual -- what he was saying  
13 was a consensual hookup, or something to that effect,  
14 in November of 2014.

15 Q. Then the paragraph starting "The fact is," six  
16 lines down, there's a statement to a pattern of  
17 revenge. Were those Beau's words?

18 A. Yes.

19 Q. What do you recall him saying about a pattern of  
20 revenge?

21 A. So I believe he was referencing the fact that the  
22 complainant had taken actions after the November 2014  
23 event that were vengeful in his mind, and he had  
24 described what some of those were. One was signing him  
25 up for a dating website, like Farmers Only, and another

1 was that he was communicating with a person or  
2 effectively -- he thought he was communicating with  
3 somebody on Tinder but didn't know he was really  
4 speaking through Allie or she was speaking on Allie's  
5 behalf, something to that, so that Allie had continued  
6 to engage in behavior that was vengeful against him.

7 Q. The next paragraph states, "Investigator conflates  
8 the two policies." Did Beau say the verb "conflates"?

9 A. Yes.

10 Q. Did he mention which policies?

11 A. Well, when he referred to current policy, my  
12 understanding of that is he was referring to the  
13 '15- '16 Title IX Policy. And when he referred to old  
14 policy, my understanding is that he was referring to  
15 the '14- '15 Code of Student Conduct.

16 Q. The next sentence says, "Current policy covers all  
17 aspects of sexual assault." Do you recall if he said  
18 anything else about the current policy?

19 A. I don't recall.

20 Q. There's a reference to the old policy. Did he  
21 state what the old policy is?

22 A. He didn't state specifically. I don't recall.

23 Q. Did he say anything else about the old policy  
24 other than it requires force or threat of force?

25 A. He didn't -- I don't recall that he did, and

1       besides what's listed there is that -- yeah. I don't  
2       recall him saying anything in addition to what's listed  
3       there.

4       Q.     When Beau and his advisor are in the room, where  
5       is Allie?

6       A.     We arrange for both the complainant and the  
7       respondent to have a space on campus. They were in  
8       separate rooms. I believe in this case that Allie was  
9       in a private room in the Sarah Doyle Women's Center  
10      with her advisor, but she has telephone access to the  
11      statement. So she would have been on the phone  
12      listening to this.

13      Q.     After Beau completes his statement, what happens  
14      next?

15      A.     After Beau completes his statement, the panel is  
16      provided with the opportunity to ask him questions if  
17      they would like to, and then -- I don't believe they  
18      did in this case, and then effectively we switch.

19           And so Beau returns to the space that was  
20      arranged for him, which I believe was in the Faculty  
21      Club, and then the complainant is brought down, and we  
22      confirm that Beau and his advisor are on the phone, and  
23      then Allie begins her statement.

24      Q.     The next statement is the summary of Allie's  
25      presentation?

1 A. Yes.

2 Q. There's a reference in the paragraph, "He got me  
3 in a dark room." Third line down, it says, "Per  
4 Brown's policy." Did she mention which policy?

5 A. She didn't specifically mention which policy; but  
6 based on the other information that she was giving, I  
7 understood this to be a reference to the '15-'16 Title  
8 IX Policy.

9 Q. Were there references to any other policies by  
10 Allie?

11 A. I don't believe so.

12 Q. The panel asked Allie a few questions?

13 A. Yes.

14 Q. After Allie's appearance is completed, what  
15 happens next?

16 A. So the panel has an opportunity -- the panel  
17 convenes, and basically they're given the opportunity  
18 to ask any -- what they believe to be procedural  
19 questions that would be outside of the scope of the  
20 Chair's role, ask questions of me. In this case, there  
21 was one question of me related to prior conduct  
22 history.

23 Q. Is that the KT question?

24 A. Yes. That refers to Kate Trimble asked are prior  
25 conduct issues something we should consider.

1 Q. The last page of this document has two notations,  
2 AW. Is that you?

3 A. That's me.

4 Q. The first is your response to Ms. Trimble's  
5 question?

6 A. Yes.

7 Q. What did you tell her?

8 A. I told her that prior conduct history is not  
9 relevant to whether a violation of the policy occurred  
10 and that information would only -- if it existed, would  
11 only be disseminated in the event that a person was  
12 found responsible. And so in determining a sanction,  
13 they could consider prior conduct history. And that  
14 would be, again, only disseminated if there was a  
15 finding of responsibility.

16 Q. The final notation, AW, were you asked a question?

17 A. I wasn't. I elected to state that because of  
18 Allie's references throughout to the policy, I wanted  
19 to again reiterate to the panel, make sure there was no  
20 confusion about which was the relevant policy that  
21 applied.

22 Q. When the panel deliberates, are you part of that  
23 process?

24 A. I'm not.

25 Q. Did you leave?

1       A. I immediately leave and -- yes. That's why  
2       there's no notes.

3       Q. After you left, what did you do next?

4       A. I went back to my -- I believe I went back to my  
5       office and had a brief meeting with Jessica Katz, the  
6       Title IX investigator, about a separate issue. And  
7       Allie had requested a meeting with me and her advisor  
8       and had asked if they could come to my office at that  
9       time, and they did.

10      Q. On that day?

11      A. On that day.

12      Q. What was discussed in that meeting?

13      A. They wanted to anticipate -- Allie had expressed  
14       safety concerns, and of course at that point we didn't  
15       know what the outcome of the hearing would be. So we  
16       discussed what her safety concerns would be if Beau was  
17       found responsible and what her safety concerns would be  
18       if Beau was found not responsible.

19           I also took that opportunity based on, again,  
20       Allie's statement to the panel to remind them that, as  
21       I had told them before and as Djuna Perkins had listed  
22       in the investigation report, that the '14-'15 Code was  
23       what applied. Those were the two topics that we  
24       discussed.

25      Q. When the panel deliberates, is there a record kept

1 of those deliberations?

2 A. The findings letter is effectively the record of  
3 those deliberations.

4 Q. When did you first learn the result of the panel  
5 deliberations?

6 A. I meet up with Gretchen Schultz, the Chair, after  
7 each panel hearing to gather the documents because they  
8 are unredacted in that format. I have developed a  
9 system of getting those exact documents back and  
10 shredding them myself just to make sure they're not  
11 floating around on campus, and she collects them from  
12 every single panelist. I collect them back from her.  
13 She generally briefly says what the results would be,  
14 meaning responsible or not responsible, and the  
15 sanction.

16 Q. Did you have such a meeting with Professor  
17 Schultz?

18 A. In this case, it was -- I wouldn't call it a  
19 meeting. It was after meeting with Allie and her  
20 advisor, I had a meeting in University Hall. And when  
21 Gretchen was leaving Horace Mann, we sort of met in the  
22 stairwell of University Hall. She was handing me the  
23 documents. Because we had no privacy, she just said,  
24 "Responsible, suspension," and I said, "Okay," and that  
25 was the end of the conversation.

1 Q. Exhibit 26, do you recognize this letter?

2 A. Yes. It is a letter that I wrote -- this specific  
3 version is the one I wrote to Beau. I wrote an  
4 identical or nearly identical version except the  
5 references -- the names and references to complainant  
6 and respondent the day after the hearing to both of the  
7 parties.

8 Q. Why did you write this letter?

9 A. I wrote this letter because of Allie's final  
10 statement to the panel where she went through the  
11 "consent" definition being the '15-'16. At this point,  
12 I didn't know the "consent" definition used by the  
13 panel. And in the meeting that I had with Allie and  
14 her advisor, Laura Dunn, even though I verbally said  
15 multiple times that the panel was under no obligation  
16 to use the "consent" definition and that the applicable  
17 Code was '14-'15, it seemed like that wasn't very  
18 clear.

19 So I decided to -- in thinking this over, I  
20 decided to write this letter. Because I was writing it  
21 to Allie, I wanted to write it to Beau as well. So  
22 that was really my motivation in drafting the letter.

23 Q. Exhibit 27, do you recognize this document?

24 A. This is the findings letter, the final findings  
25 letter from Gretchen Schultz to me on April 19th

1       regarding the Beau and Allie hearing.

2       Q.     And the rationale stated, did you know of that  
3       rationale prior to this letter?

4       A.     I didn't.

5       Q.     When you read this letter, did you have any  
6       concerns?

7       A.     Because of the discussion about the relevant  
8       policy and process, I knew that it may raise some  
9       concerns for specifically Beau. And so as a result, I  
10      reached out to Beau and arranged a telephone call to  
11      give him the results, and I pointed this out to him and  
12      his advisor on that call before I sent this document to  
13      them.

14      Q.     Did you speak with Professor Schultz?

15      A.     I don't believe I spoke to Gretchen Schultz about  
16      the rationale, no.

17      Q.     Both students appealed?

18      A.     Yes.

19      Q.     And I'm showing you what is marked as Exhibit 31.  
20      Do you recognize this?

21      A.     Yes. This is a letter from me to Gretchen Schultz  
22      that outlines effectively some of the procedural  
23      history of this case from the time of the findings  
24      letter through that date.

25      Q.     And the cc to the panel members, why aren't their

1       names listing --

2       A.    I wrote this letter on April 26th knowing that at  
3       any time I might have a baby and be out of the office,  
4       and the appeals panel wasn't yet convened or vetted for  
5       conflict, so I didn't know who it would be. But I was  
6       trying to indicate -- my goal in writing that both in  
7       the final paragraph, I believe you should make the  
8       panelists aware, and also to cc was to indicate that it  
9       was my -- I wanted the appeals panel members, whoever  
10       they ultimately were, to get a copy of this letter or  
11       at least the substantive information contained within  
12       it.

13       Q.    And the final paragraph indicates -- you state  
14       that it would be in the University's best interest to  
15       address the Court's concerns regarding any procedural  
16       errors before this case becomes final. Why did you  
17       feel it would be in the University's best interest to  
18       do so?

19       A.    Well, because, again, I knew that the concern was  
20       a procedural error related to the "consent" definition.  
21       And because this is a University process, I wanted it  
22       to be addressed by the Title IX Council. I wanted them  
23       to hear the appeal to see whether the three members of  
24       an appeals panel would feel like this was a substantial  
25       procedural error.

1 MR. RICHARD: Your Honor, may I have one moment?

2 THE COURT: Yes.

3 (Pause.)

4 MR. RICHARD: No further questions, your Honor.

5 THE COURT: Thank you.

6 MR. RICHARD: Let me just clean up first here.

7 THE COURT: Sure.

8 What exhibit number was that last exhibit?

9 MR. RICHARD: The letter, April 26th, your  
10 Honor, was 31.

11 THE COURT: Thirty-one. Thank you.

12 **REDIRECT EXAMINATION BY MR. RATCLIFFE**

13 Q. Good morning.

14 A. Good morning.

15 Q. I believe in your cross you testified that you had  
16 background in Title IX, which includes representing  
17 complainants and sometimes respondents?

18 A. Yes.

19 Q. And approximately how many respondents?

20 A. So when I refer to "respondent," I mean a  
21 respondent in a disciplinary hearing, not necessarily  
22 in a sexual misconduct case.

23 Q. So in sexual misconduct cases, you never  
24 represented a respondent?

25 A. No.

1 Q. So disciplinary cases, what types of allegations?

2 A. So at times if a student made statements that they  
3 were sexually assaulted by another student, the  
4 responding or the student who was accused would file  
5 false representation or harassment allegations against  
6 the person who was identifying themselves as a victim  
7 of sexual assault.

8 Q. And these were at different -- you didn't -- the  
9 services you provided weren't at one specific  
10 university?

11 A. No.

12 Q. And when you were representing a respondent, you  
13 would go about to determine which rules applied;  
14 correct? You would look at the Code, whatever the Code  
15 that the university had?

16 A. Yes.

17 Q. Okay. And you'd look at a definition of what the  
18 respondent was alleged to have -- the charge that the  
19 respondent -- the violation the respondent was alleged  
20 to have committed?

21 A. I'm sorry?

22 Q. Tell me what you would do -- were you representing  
23 a respondent at a disciplinary hearing in a university,  
24 your first time at this -- representing an individual  
25 at this university, how do you do your due diligence?

1       A. I would pull the relevant policy that was either  
2       provided by the administrator who the client met with  
3       or pull it off a website, whatever was available.

4       Q. When you said "the relevant policy," that would  
5       include the allegation against the student?

6               You would have to look to see, for example, if a  
7       student was alleged to have submitted a false report of  
8       sexual assault?

9       A. Yes.

10      Q. You would look at the university's Code as to what  
11       the violation -- what were the -- what the university  
12       had to prove to show a violation; correct?

13      A. I would look at the relevant section.

14      Q. Yes, of the charge?

15      A. Yes.

16      Q. So if it was -- often, like I know you didn't do  
17       criminal law, but if it was a criminal charge, you'd  
18       look at a statute?

19      A. Right.

20      Q. In this case it's a student conduct proceeding,  
21       but there's a policy or a Code that's akin to a  
22       statute?

23      A. Yes.

24      Q. And the Code states filing a false complaint, for  
25       example, the respondent knowingly filed a false

1       complaint?

2       A.    Correct.

3       Q.    And you would then say and that -- you'd go  
4           through the Code to determine what the university had  
5           to prove?

6       A.    Yes.

7       Q.    Okay. And you'd also look at the procedure that  
8           applied?

9       A.    Yes.

10      Q.    Now, in this case, Beau was alleged to have  
11           committed Violation III in the 2014 Code,  
12           non-consensual -- sexual misconduct, non-consensual  
13           sexual misconduct with Allie; correct?

14      A.    Correct.

15      Q.    And that was the central issue in Beau's -- the  
16           central charge against Beau; correct?

17      A.    Yes.

18      Q.    So it would be reasonable for Beau to go to the  
19           Code of Student Conduct to determine what the  
20           University had to show he did; isn't that true?

21      A.    Yes.

22      Q.    Okay. That's the notice that the University is  
23           giving to Beau; correct?

24      A.    That it was a non-consensual sexual -- yes.

25      Q.    We went through this yesterday. That's the notice

1 that's being provided?

2 A. Yes.

3 Q. And that's just like you did when you represented  
4 respondents at various universities?

5 A. Yes.

6 Q. You'd go to the Code, this is what they have to  
7 prove?

8 A. Yes.

9 Q. Now, in this case, the allegation is  
10 non-consensual -- we can put up the --

11 MR. RATCLIFFE: Excuse me, your Honor.

12 THE COURT: Mr. Ratcliffe, while you're getting  
13 ready, I just want to remind you this is redirect. So  
14 you don't need to repeat anything that you've done on  
15 direct. Just address yourself to the cross.

16 Q. So the allegation is non-consensual physical  
17 conduct of a sexual nature; correct?

18 A. In this case, it was (a) and (b).

19 Q. And so the central issue is whether or not it was  
20 non-consensual?

21 A. Yes.

22 Q. Okay. And it wasn't Beau's responsibility to  
23 prove that it was consensual; correct?

24 A. Correct.

25 Q. Okay. It was by a preponderance of the evidence

1 that the encounter was non-consensual?

2 A. Right.

3 Q. You referenced that you often communicate with  
4 advisors as you communicated with Laura Dunn?

5 A. I referenced that advisors often communicate with  
6 me, yes.

7 Q. Are you aware that Beau's advisor sent a letter  
8 directly to you?

9 A. Yes.

10 Q. Okay. And are you aware that -- and upon receipt  
11 of that letter, did you forward that letter to the  
12 Office of General Counsel?

13 A. I don't recall specifically. My response is  
14 generally to write back to the student and to reach out  
15 to General Counsel and ask that they coordinate  
16 directly with attorneys.

17 Q. And are you aware as to whether or not when Beau's  
18 advisor sent a letter to you that the Office of General  
19 Counsel advised his advisor not to communicate directly  
20 with you?

21 A. I'm sorry. Can you repeat the question.

22 Q. Did you receive a cc of a letter from the Office  
23 of General Counsel indicating that there should be no  
24 direct communication between Beau's advisor and you as  
25 a Title IX Program Officer?

1 MR. RICHARD: Objection.

2 THE COURT: Grounds?

3 MR. RICHARD: No such document has been put in  
4 evidence. She said she doesn't know it.

5 THE COURT: Well, I'm not sure she said that.  
6 So let's let her answer that question.

7 A. I don't recall the document specifically. But as  
8 a practice, when attorneys reach out to me, I advise  
9 them directly or General Counsel reaches out to them  
10 and says attorneys have to speak with the Office of  
11 General Counsel. This is if the student is not present  
12 as part of the communication or the call.

13 Q. And you referenced a meeting that you had with  
14 Beau where he discussed the no-contact order that was  
15 filed against him?

16 A. Yes.

17 Q. Okay. And I believe it was -- and correct me if  
18 I'm wrong, did you indicate that you had no involvement  
19 in requesting that no-contact order?

20 A. I did not request the no-contact order.

21 Q. Did you send an e-mail to the Office of Student  
22 Life saying words to the effect of I think we need  
23 no-contact orders here?

24 A. I sent an e-mail to them that I -- indicating,  
25 which I often do, when I believe those students are

1       going to request a no-contact order. In this case, two  
2       students had indicated to me that they were going to  
3       request no-contact orders, which they did not  
4       ultimately do.

5       Q.     They did not request no-contact orders?

6       A.     No. Dean Suarez put the no-contact orders in  
7       place in this case. She made the request.

8       Q.     Now, on cross-examination, we discussed the e-mail  
9       that Djuna Perkins sent you and that Beau was convinced  
10      there was some sort of conspiracy claim against him --  
11      conspiracy against him? You discussed that on  
12      cross-examination?

13      A.     Yes.

14      Q.     And I believe you said that the last sentence,  
15      however, if -- now that he sees this explanation, he  
16      accepts it, I thought it would be easy to simply redact  
17      that section so that there is no mention of the -- and  
18      that would be Witness 9 respondent interaction?

19      A.     Yes.

20      Q.     She wasn't suggesting that you provide Beau with  
21      legal advice?

22      A.     I take that suggestion to be that she was saying  
23      that if in his response to the report he withdraw his  
24      conspiracy claim on his own, that she would also remove  
25      the character -- what's being described as character

1 evidence.

2 Beau's redactions did request that some  
3 character evidence be removed, but he also, I believe,  
4 still included -- he wanted included the conversation  
5 that occurred in the Ratty.

6 Q. So -- and it's your understanding that if Djuna  
7 Perkins said, "Beau, I'll take it out, you've got to  
8 remove the conspiracy claim," that that would be  
9 providing advice to Beau?

10 A. That would be overstepping, yes.

11 Q. That would be providing advice, legal advice to  
12 Beau?

13 A. I'm not saying -- I didn't state it would be  
14 providing legal advice. I would just say it would be  
15 advising him about how to proceed with his comments or  
16 his case.

17 Q. Well, I believe you said that the guidance from  
18 the Department of Education doesn't allow legal --  
19 doesn't allow legal advice. Is that what you said?

20 A. No. I said that the guidance requires us to be  
21 equitable to the students involved in a case. And by  
22 providing advice to one student about the strategy that  
23 they would take, you know, in removing this conspiracy  
24 claim, then we'll remove this, and not doing it for  
25 another student would create an imbalance and inequity.

1                   So it's not the legal advice. It's just  
2 advising one party versus another, and it's not our  
3 role to advise either of the parties. It's the role of  
4 their advisors.

5                   Q. And it's your understanding that just by saying,  
6 "Okay, you made this claim, take it out, we'll take out  
7 all this character evidence," that's advice?

8                   A. Yes, because the basis of asking to remove that  
9 claim is because you're basically suggesting it doesn't  
10 look so good. So yes, I believe that that's advice.

11                  Q. And I believe that you -- that you discussed that  
12 Gretchen had the prior conduct history regarding Beau?

13                  A. Gretchen had copies of the prior conduct history  
14 in her packet at the panel.

15                  Q. And that was the violation of the no-contact order  
16 regarding Witness 9?

17                  A. Yes.

18                  Q. And that was also in Djuna's -- in the  
19 investigator report, that information?

20                  A. There were references to that information, yes.

21                    MR. RATCLIFFE: May I have a moment, your Honor.

22                    THE COURT: Yes.

23                    (Pause.)

24                    MR. RATCLIFFE: Nothing further.

25                    THE COURT: Thank you, Mr. Ratcliffe.

1                   Mr. Richard, do you have anything further on  
2 recross?

3                   MR. RICHARD: No, your Honor.

4                   THE COURT: Okay. I do have some questions,  
5 Ms. Walsh, I'd like to ask you.

6                   Let me start with some background questions  
7 picking up on the development of this policy. I'm  
8 wondering if based on your experience, not just at  
9 Brown but in your prior experience, is the model that  
10 was adopted here by Brown, is it a common model, that  
11 is, the model of a single investigator who prepares a  
12 thorough report and then presents that to a panel or is  
13 that a model that Brown has just come up with on its  
14 own?

15                  THE WITNESS: It's increasingly very popular.  
16 This is the model many institutions are moving toward,  
17 I would say that more common in institutions -- peer  
18 institutions of Brown. It's, frankly, a fairly  
19 expensive model because of hiring external or role of  
20 an investigator versus a hearing.

21                  So I think many institutions I worked with  
22 didn't have that capacity, but most of our peer  
23 institutions have a very similar model, which would be  
24 referred to as an investigator model.

25                  THE COURT: Now, something that I think very

1       much can play in this hearing, and I want to ask you  
2       about how you got to the conclusion about the role of  
3       the investigator, is that the policy contemplates, if I  
4       understand it correctly, that the investigator gathers  
5       all the evidence and also is permitted to make  
6       credibility findings and report those to the panel; is  
7       that right?

8           THE WITNESS: That's correct.

9           THE COURT: Okay. Now, it would seem to me that  
10       in a case of this nature where you have conflicting  
11       stories of the participants that making credibility  
12       findings is essentially reaching a conclusion as to  
13       responsibility, isn't it?

14           THE WITNESS: It can feel that way, certainly,  
15       and that's something that we contemplated. When the  
16       investigators include credibility assessments, they  
17       often do so by pointing out the supporting  
18       documentation or other witness testimony to direct the  
19       panelists to that. And I think that question was asked  
20       directly of Djuna by one of the panelists in terms of,  
21       you know, who do you believe.

22           So I think the investigator in a case like this  
23       can have a fairly significant weight to the panel's  
24       decision if the investigator is asked the question  
25       effectively which of the parties do you believe.

1           My memory in this case is Djuna actually found  
2 both of them fairly credible when she was asked that  
3 question but, again, felt like it came down to whether  
4 coercion was present in the room on November 10th,  
5 2014.

6           THE COURT: Okay. But she essentially reached  
7 the conclusion, didn't she, that coercion was used by  
8 Beau? Would you agree with that?

9           THE WITNESS: I don't think I would.

10           THE COURT: No?

11           THE WITNESS: No. I don't think that Djuna did  
12 reach that conclusion. I felt like she thought and she  
13 indicated to the panel it's really your role as  
14 administrators and community members at Brown to  
15 determine whether this is coercion under the community  
16 standards here.

17           THE COURT: Okay. So you feel -- and maybe this  
18 is right, and I only reviewed parts of the report  
19 quickly and other parts more thoroughly, but your view  
20 of the report is that it doesn't reach a conclusion as  
21 to credibility findings that Allie is more credible  
22 than Beau?

23           THE WITNESS: I wouldn't -- I didn't read the  
24 report and walk away thinking that Allie was more  
25 credible than Beau or Beau more than Allie. I think

1       there were certain sections that witnesses and  
2       supporting documentation seemed to support their  
3       version of events.

4           THE COURT: Okay. All right. Now, so part of  
5       your role is to review the report and comment on it;  
6       right?

7           THE WITNESS: I review the reports for, again,  
8       consistency because we use different investigators,  
9       external investigators, internal investigators.

10          THE COURT: Right.

11          THE WITNESS: So part of my role is to review  
12       the report and ensure compliance with both Title IX and  
13       also specifically with our complaint process and other  
14       kind of various rules but not to impose my judgment on  
15       the investigator.

16          THE COURT: I'm going to end up asking questions  
17       of Ms. Perkins about this, but since I -- let me ask  
18       you this. Do you think it's part of your role to  
19       evaluate the information that the investigator is  
20       evaluating and commenting upon to ensure that it makes  
21       sense?

22          THE WITNESS: I just want to make sure I'm  
23       understanding your question. So to say that the  
24       information that she's gathering makes sense as part of  
25       the investigation?

1                   THE COURT: Right. Well, let me put it to you  
2 this way. Do you think that -- is it part of your role  
3 to assess the investigator's evaluation of evidence and  
4 information and her assessment of it to see if it  
5 logically makes sense? Is that part of your role?

6                   THE WITNESS: The investigator is given a lot of  
7 discretion under our process, and I aim to not  
8 intervene with that inappropriately. With that being  
9 said, my role is, again, to ensure compliance with the  
10 guidance and our process, and that is making sure that  
11 the process is fair and equitable.

12                  So if I believe that there's something that  
13 should -- a conclusion or the inclusion of some  
14 material that I think makes no logical sense and  
15 therefore it rises to the level of unfairness or  
16 inequity, yes, I think in that situation it would be my  
17 role to interject and to inquire about how she got  
18 there or her role or remedy that in some way.

19                  THE COURT: All right. So let me focus you on  
20 the end of the investigator's report. In the paragraph  
21 right before the conclusion, the investigator -- I'll  
22 just read this because it's not that long.

23                  THE WITNESS: Okay.

24                  THE COURT: "By the respondent's own admission,  
25 he treated the complainant poorly regardless of whether

1       their sexual activity was consensual or not. The  
2       complainant's dislike of him is, therefore, reasonable  
3       even if he didn't assault her as is her desire to seek  
4       support from other like-minded individuals. The  
5       complainant's and Witness 9's negative feelings toward  
6       the respondent do not assist the panel in evaluating  
7       whether the complainant's claims are fabricated,  
8       neither does the conversation overheard by Witness 11,  
9       because there is no evidence that their reasons for  
10      wanting to get him," that's in quotes, "were unfounded  
11      or that they wanted to take any action other than that  
12      to which they were entitled.

13           Moreover, fabricating allegations requires a  
14       person to make statements knowing them to be false.  
15       Thus, if the panel concludes that the complainant  
16       genuinely believed that she was coerced into sexual  
17       activity, her claims would not amount to fabrication  
18       even if the panel concludes that no sexual misconduct  
19       occurred."

20           I'm wondering, do you think that that paragraph  
21       is logically consistent?

22           THE WITNESS: Well, what I gather from that  
23       paragraph is that the investigator -- the investigator  
24       essentially feels that while the panel might not find  
25       that coercion was present by Brown's community

1 standards, that Allie was credible and at least that  
2 she felt coerced. But that doesn't necessarily mean it  
3 amounts to a policy violation at Brown.

4 Some students will describe situations where  
5 they feel like they were coerced, but from a policy  
6 standpoint, the University wouldn't necessarily take  
7 that position.

8 So what I gather from that is she was really  
9 saying in some respects you may believe the  
10 complainant, but that doesn't mean the respondent is  
11 responsible and I don't find enough here to support  
12 that they were fabricating this to get him. Therefore,  
13 the conspiracy didn't have -- she didn't find that the  
14 claim for conspiracy was credible.

15 THE COURT: Okay. I understand what you're  
16 saying, and that makes sense. Let me ask you this.  
17 Why wouldn't the conversations and the text messages  
18 between the complainant and Witness 9 and the  
19 conversations overheard by Witness 11, et cetera, about  
20 wanting to get him, why wouldn't that be relevant to  
21 considering whether the allegations were potentially  
22 fabricated? I think that's a separate question from  
23 what you just said.

24 THE WITNESS: I do, too. I think she agrees  
25 that they would be -- I guess I don't take that to mean

1       they wouldn't be relevant for the question of  
2       conspiracy but, rather, there wasn't information to  
3       support the conspiracy claim and, therefore, they  
4       wouldn't be relevant to the determination of whether a  
5       policy violation of Section III of the '14- '15 Code  
6       occurred.

7           THE COURT: Why not? I'm not sure I understand  
8       why they wouldn't be.

9           THE WITNESS: Because those conversations --  
10       because she found a lot of information in her mind to  
11       support that these students had consistently -- that  
12       they had consistently brought forth these claims. And  
13       while the University may not agree that they were a  
14       policy violation, that they weren't fabricated; that  
15       they had talked about this long before they had ever  
16       come to the University to seek any action.

17       So, for example, these discussions, you know,  
18       they brought this to the Executive Board of Mock Trial  
19       in the earlier academic year, so an entire academic  
20       year before they sought any support or any  
21       ramifications through the University.

22       So I think what she's getting at is, this shows  
23       that they weren't fabricating this for the purpose of  
24       the Title IX complaint about whether a policy  
25       violation, so there's not enough to support a

1 conspiracy.

2 THE COURT: Okay. So if I understand this  
3 correctly, and maybe I don't, but there's a lot of  
4 information in this report about these conversations  
5 and about the back and forth with Witness 9 and the  
6 complainant and what was overheard and so forth. All  
7 that's in there, right?

8 THE WITNESS: Right.

9 THE COURT: Now, I read that sentence to say  
10 that the panel can't reach any conclusion based on  
11 that. The investigator is telling the panel that that  
12 evidence is not relevant to the assessment of whether  
13 there was a violation of the policy or not, whether it  
14 was consensual or not. Do you agree that's the reading  
15 of that sentence?

16 THE WITNESS: Is it possible to put it up on the  
17 screen so I can look at it again?

18 THE COURT: Sure. Counsel can do that. This is  
19 Exhibit 18, last page.

20 THE WITNESS: Thank you.

21 MR. RICHARD: Last paragraph, your Honor.

22 THE COURT: The paragraph right above  
23 "Conclusion."

24 MR. RICHARD: By the respondent.

25 THE COURT: By the respondent, right. So the

1       third sentence beginning, The complainant's and  
2 witness's denied negative feelings toward the  
3 respondent do not assist the panel in evaluating  
4 whether complainant's claims are fabricated, neither  
5 does the conversation overheard by Witness 11, etc.  
6 That's what I'm talking about.

7           THE WITNESS: Okay. So I guess how I take this  
8 to be is that the respondent had admitted that he  
9 hadn't always treated specifically the complainant or  
10 he had treated her poorly, I don't know if those were  
11 his words or those were her words, and that, therefore,  
12 by his own admission, if the investigator is finding  
13 him credible and it's his own admission, that he had or  
14 they had justified feelings of some negativity towards  
15 him and, therefore, that is the likely reason they were  
16 having this conversation in the Ratty versus any form  
17 of fabrication.

18           So really to me this is a credibility assessment  
19 that the respondent made this statement, I have no  
20 reason to disagree with him, the complainant also made  
21 a similar statement that he had treated -- you know,  
22 had outlined events he had treated her poorly and,  
23 therefore, this was the likely reason for the  
24 conversation in the Ratty based on the timeframe versus  
25 any form of fabrication.

1                   So that's how I understand that to be kind of  
2                   her assessment of the conversation in the Ratty and  
3                   what relevance that would have.

4                   THE COURT: Well, do you think that that  
5                   sentence in this paragraph is essentially telling the  
6                   panel that they have to disregard that evidence with  
7                   respect to determining the credibility of the  
8                   complainant or the respondent?

9                   THE WITNESS: Well, I don't think this weighs on  
10                   the credibility of the complainant or the respondent  
11                   necessarily because this is really about the  
12                   conversation in the Ratty. So it's more how to view  
13                   the information about --

14                   THE COURT: Well, that's my point. If the panel  
15                   could consider those conversations as evidence of  
16                   fabrication, wouldn't that logically lead you to the  
17                   conclusion that the complaint might be fabricated and,  
18                   therefore, the encounter might have been consensual?

19                   Isn't that the logical inference that one could  
20                   draw from concluding that there was a -- you know, this  
21                   term "conspiracy" has been used, that there was a  
22                   conspiracy to retaliate or to get him? Isn't that the  
23                   logical inference?

24                   THE WITNESS: That could be a logical inference.

25                   THE COURT: So isn't the opposite of that also a

1       logical inference? That is, there's not enough  
2       information -- you can't consider this evidence. It  
3       doesn't amount to enough evidence to show that they  
4       were out to get him. Therefore, it can't be considered  
5       by you to suggest that there's fabrication. Therefore,  
6       it's not evidence of consensual behavior. Do you  
7       follow my question?

8           THE WITNESS: I think so. I follow your  
9       question in the sense that I believe that you're saying  
10       that either could be a logical inference, that either  
11       this was a claim for fabrication and, therefore,  
12       information to support Beau's account that this was  
13       consensual or enough information to say that this  
14       wasn't fabricated.

15           THE COURT: Let me put it a different way. The  
16       investigator could have said, Look, there's all this  
17       conversation that took place between all these  
18       witnesses.

19           THE WITNESS: Sure.

20           THE COURT: You can assess that however you see  
21       fit. And just left it at that. But instead of doing  
22       that, the investigator said, There is all this  
23       information about these conversations. There is no  
24       basis for you to conclude that there was an effort to  
25       fabricate -- to get him and, therefore, it can't be

1 evidence of fabrication.

2 Well, therefore, I'm saying the logical  
3 inference from that is that it, therefore, can't be  
4 taken by the panel as evidence of consensual behavior.

5 THE WITNESS: So part of the -- it does say in  
6 the complaint process, it says that the investigator  
7 can draw reasonable inferences and provide that. This  
8 is a synthesizing of information for the panel, and  
9 this was the way the investigator synthesized this  
10 information and the assessments or inferences that she  
11 came to.

12 THE COURT: Right. So here's my question. If  
13 the panel was on the fence -- let's say like we say to  
14 juries all the time. Imagine two scales; they're  
15 evenly balanced. The Government has to tip the scale  
16 or the Plaintiff has to tip the scale. If the panel  
17 was evenly balanced, do you think that that commentary  
18 about that evidence would have any impact on how they  
19 viewed the evidence?

20 THE WITNESS: I don't because I think there was  
21 a lot of information without this paragraph in the  
22 report to reject a claim of fabrication or conspiracy  
23 especially from Witness 9's consistency with her  
24 reporting throughout.

25 So I think even if you disregard this paragraph,

1       in my opinion the panel has the information contained  
2       in the report to come to a very similar conclusion or  
3       the same conclusion.

4           THE COURT: Okay. Let me ask you about another  
5       part of the report. You were asked some questions  
6       about --

7           MR. RICHARD: Do you want me to turn the page?

8           THE COURT: Sure. Put up page 15 at the bottom,  
9       Footnote 26.

10          So you were asked some questions about this  
11       footnote and we can just go through it.

12          THE WITNESS: Sure.

13          THE COURT: The messages in this document are  
14       not dated but Witness 9 recalled receiving a series of  
15       text messages along these lines on December 29, 2014.

16          I suppose we should take a look back up to where  
17       the footnote is, which is right above it.

18          In the text it says, On December 26, 2014,  
19       complainant sent Witness 9 another series of text  
20       messages in which she discussed the incident with the  
21       respondent.

22          So then the footnote says, The respondent  
23       requested a complete set of electronic communications  
24       between the complainant and Witness 9 to support his  
25       claim that the two conspired to fabricate claims

1       against him. As discussed further below, Witness 9 and  
2       the complainant freely admit that the respondent's  
3       behavior was a frequent subject of discussion and both  
4       freely admit that they harbor significant animus toward  
5       him. Neither is enough to suggest the complainant  
6       fabricated facts underlying the allegations of the  
7       complaint, as the complainant's reaction is a typical  
8       response to perceived inappropriate behavior.

9           More importantly, asking the complainant and  
10       Witness 9 to disclose all their communications is  
11       overly burdensome where the central issue in this case  
12       is not whether certain sexual acts occurred or even  
13       whether the complainant literally consented to them but  
14       whether the consent was obtained through coercion.

15           And then it goes on to cite the 2014 Code.

16           So the reference in that footnote is to the part  
17       of the report that I just asked you about a few minutes  
18       ago at the end where she reaches her conclusion about  
19       there's not enough evidence to reach a conclusion that  
20       there was a quote, unquote, conspiracy.

21           But what I'm wondering about is why would the  
22       investigator conclude that she should -- if she's going  
23       to make that conclusion, why would she conclude that  
24       she should not look at and the panel should not look at  
25       the full body of text messages? How is it that she

1 concludes that it was too burdensome to do that?  
2 Wouldn't that be relevant for both the investigator and  
3 the panel to see those text messages if she's going to  
4 reach a conclusion, because she reaches a conclusion in  
5 this report that there's not enough information to  
6 conclude that there was an effort to get him, and then  
7 says it would be too burdensome to look at all the  
8 communications.

9 THE WITNESS: Yes. In discussing with Djuna  
10 Perkins about this specific issue was that she was  
11 conceding the point -- in her mind the request was made  
12 by the respondent and his advisor for the full set to  
13 show that they frequently talked about Beau and how to  
14 proceed with the University reporting, et cetera. And  
15 Djuna was conceding that they agree that they did that  
16 and they agree that they harbor animosity towards him.  
17 So they've agreed to what the respondent is stating is  
18 going to be found in those text messages. That was her  
19 description to me about why she didn't feel like a full  
20 set was necessary because she was conceding the point  
21 that she shared with me that the respondent was looking  
22 to get at.

23 THE COURT: But there could be -- you have to  
24 agree that this was -- this is a case where the  
25 complainant's position about whether this was a

1 consensual encounter or not evolved over a fairly  
2 significant amount of time, right? She didn't get to  
3 the conclusion that it was non-consensual and make a  
4 complaint until many months after the encounter, right?

5 THE WITNESS: Yes.

6 THE COURT: There's a lot of evidence that could  
7 be taken in different ways that maybe she thought it  
8 was consensual, maybe she was confused, maybe she  
9 didn't know what to make of it, all sorts of things.  
10 And that's another matter, but she didn't get to the  
11 conclusion that it was non-consensual until much later,  
12 right? And a lot -- well, you can answer that.

13 THE WITNESS: Yes. I don't recall specifically  
14 in this case at this point, but I know there's some  
15 reference in the report about some experience that she  
16 had that she viewed it differently at that point.

17 THE COURT: Right. She went to a presentation.  
18 It was on consent. She then came to the realization,  
19 she says, that this was not consensual, right?

20 THE WITNESS: Correct.

21 THE COURT: But there's also a lot of other  
22 evidence that a lot of other things transpired between  
23 Beau and Allie regarding whether they would continue to  
24 have a relationship or not. I don't need to get into  
25 it all. You know what all that evidence is, right?

1                   THE WITNESS: Yes.

2                   THE COURT: And the feelings evolved to a  
3 negative, very negative point of view toward him,  
4 right?

5                   THE WITNESS: Yes.

6                   THE COURT: And there's also these conversations  
7 and things that get overheard. So just given all of  
8 that, I come back to the question, wouldn't you want to  
9 see, if you were making a judgment about who is telling  
10 the truth here, wouldn't you as an investigator or as a  
11 panel member want to see those conversations?

12                  THE WITNESS: So the panelists are instructed  
13 that if there's information that they feel prohibits  
14 them from making a final determination that they can  
15 and have the opportunity to request that, either at the  
16 panel or as a procedural matter to the Chair of the  
17 Title IX Council beforehand. And again, different  
18 people might have different information in this report  
19 that they would wish to see further and inquire about  
20 that with the investigator.

21                  In this case, they didn't raise those text  
22 messages. So, yes, if I was acting as the  
23 investigator, I suppose it's hard to put myself in  
24 those positions having not done all of the interviews  
25 and sat with Witness 9, with Allie and with Beau. But

1       certainly I can't deny that there may be some relevant  
2       information contained in there. But again, I think  
3       that Ms. Perkins came to the conclusion that she was  
4       conceding the point that the respondent was -- the  
5       information that the respondent was looking to obtain  
6       from those text messages.

7                   THE COURT: All right. I want to shift now to  
8       go back over a couple parts of your testimony.

9                   THE WITNESS: Sure.

10                  THE COURT: You testified, if I understand it  
11       correctly, that the reason that you placed a copy of  
12       the 2015-'16 Title IX Policy, I think we're calling it,  
13       into Gretchen Schultz's packet but not into the panel  
14       member packets was that you wanted to give the panel  
15       the option of looking to that policy as a potential  
16       source or definition on the issue of consent. Did I  
17       get that about right?

18                  THE WITNESS: Yes. I provided it to Gretchen  
19       and not to the panel because I wanted the panel to be  
20       able to come up -- to use the "consent" definition that  
21       they wanted. This was one of any number of options.  
22       In the past, panels have gone to the sex ed website,  
23       for example, and pulled information about consent from  
24       that. Or had -- you know, when Gretchen was a Student  
25       Conduct Board member, she had created sort of a cheat

1 sheet based on a basic dictionary definition of  
2 "consent" and had used that.

3 So part of why the policy was changed and  
4 updated to include a "consent" definition was because  
5 of the lack of consistency with panels in using  
6 different "consent" definitions and we wanted to create  
7 that consistency moving forward. Of course, in this  
8 case, because it was an old case, we had to give the  
9 panel an opportunity to come to a definition of  
10 "consent" in the same way the old panels did.

11 And so now that this option existed and it  
12 didn't in '14-'15, I gave it to Gretchen so that in the  
13 deliberation when they were determining, you know,  
14 there's the non-consensual section of the definition,  
15 well, how do we determine non-consensual. We have to  
16 know what is consent. If they wanted to use the  
17 '15-'16, that that was one option. I didn't know what  
18 option they would elect, certainly, but that was one  
19 that hadn't existed formerly.

20 I chose not to put it in their packet so as not  
21 to send the message that that was the appropriate  
22 definition that they had to use.

23 THE COURT: Maybe these are very fine  
24 distinctions but they could be important.

25 So you took the step of red-lining the draft

1 policy to exclude the Title IX Policy as the standard,  
2 right?

3 THE WITNESS: Correct.

4 THE COURT: So obviously you felt that including  
5 it as the standard was incorrect because there had to  
6 be some difference between the '14-'15 policy and the  
7 '15-'16 Title IX Policy, right? Or not?

8 THE WITNESS: Well, it wasn't as if there was a  
9 difference. It was that there was no "consent"  
10 definition in '14-'15, and there was a "consent"  
11 definition. So I don't know if there is -- basically,  
12 the panel would determine in '14-'15 how they would  
13 view consent. But the '14-'15 Code didn't dictate how  
14 they would view consent.

15 THE COURT: Right.

16 THE WITNESS: So I excised that to indicate that  
17 the panel in this case was not required to review that.  
18 They would go through the process in the same way they  
19 would have if this case was heard in the '14-'15  
20 academic year, for example.

21 THE COURT: But you have to agree you've  
22 reintroduced it by including it in Gretchen Schultz's  
23 packet, I mean, at least as something that the panel  
24 could discuss.

25 THE WITNESS: Yes.

1                   THE COURT: Okay. And that was intentional,  
2 right, to do that, to at least give them that option to  
3 discuss it?

4                   THE WITNESS: It was intentional to include that  
5 as one of the options.

6                   THE COURT: Okay. Now, there's been some --  
7 well, I think it's actually in the finding of the panel  
8 and I forget the exhibit number, but I believe that the  
9 panel says it referred to the Title IX Policy because  
10 it embodies the -- maybe the best thing to do would be  
11 to put it up because I don't want to misstate it.

12                  Could you put the decision of the panel up. I  
13 think it's Exhibit 18 or -- no, it's not. Is it 18?

14                  MR. RATCLIFFE: I left the exhibit book --

15                  MR. RICHARD: Twenty-seven.

16                  THE COURT: Twenty-seven? All right. We can  
17 just read it right off the screen.

18                  THE WITNESS: Sure.

19                  THE COURT: Down near the bottom. The third  
20 says, "Because the 2014-'15 Code of Student Conduct  
21 does not explicitly define 'consent,' the panel  
22 referred to the current Sexual and Gender-Based  
23 Harassment, Sexual Violence, Relationship and  
24 Interpersonal Violence and Stalking Policy" -- and this  
25 is the language I want to focus on -- "which codified

1 Brown University's existing community standards with  
2 respect to the, 'maintaining a safe learning, living  
3 and working environment where healthy, respectful and  
4 consensual conduct represents campus social norms.'

5 So the panel reaches a conclusion that the  
6 current policy codified Brown University's existing  
7 community standards, but you just said that up until  
8 this point under the '14-'15 policy there was no  
9 definition of consent and every panel used something  
10 different.

11 THE WITNESS: Panels have the opportunity to use  
12 whatever they would like. I have not gone through -- I  
13 don't know exactly what each panel used, but, yes, they  
14 had the opportunity to use whatever information they  
15 would like. And I know some went to certain websites  
16 and others pulled from, for example, a dictionary.

17 THE COURT: Okay. So do you think that there's  
18 consistency between what a panel used before the  
19 '15-'16 Title IX Policy was developed and what's in the  
20 Title IX Policy? Do you think there's consistency  
21 there, or are they different?

22 THE WITNESS: If I understand your question, so  
23 effectively is what they used in '14-'15 what is now  
24 contained in the '15-'16 policy?

25 THE COURT: That's a good paraphrase.

1                   THE WITNESS: Okay. So I wasn't here but that's  
2 the information that I've gathered from members of the  
3 Sexual Assault Task Force. Gretchen Schultz was also  
4 part of the Sexual Assault Task Force. Our "consent"  
5 definition in the current policy is very lengthy and  
6 covers a lot of ground. I know I read it into the  
7 record yesterday, and it was very lengthy. So I know  
8 that that was pulled from. The Sexual Assault Task  
9 Force had representation from a wide range of people,  
10 students being part of that. Bita Shooshani, who was a  
11 former sexual assault advocate on campus, for example,  
12 participated in that. People like that.

13                   So she would have been, for example, a person  
14 who worked in the office that had the website where  
15 that information was pulled from.

16                   People in Student Conduct participated in the  
17 Sexual Assault Task Force. So in having that  
18 representation, my understanding is that what  
19 ultimately became our "consent" definition pulled from  
20 those areas, which are likely the same areas that the  
21 panels pulled from in the '14-'15 academic year.

22                   THE COURT: Okay. I might have a few other  
23 questions but those were the main areas, I think.

24                   THE WITNESS: Okay.

25                   THE COURT: I want to come back to the -- I know

1       we're running out of time with you so I'll try to be  
2       quick.

3           I do want to come back to this letter you  
4       received and information you received from Laura Dunn.  
5       And I guess the question is -- I want to just -- I may  
6       have misunderstood something. Were you saying that  
7       it's okay to receive information from an advocate such  
8       as Laura Dunn, for you to receive that, but if the  
9       advocate or advisor is an attorney like Mr. Ratcliffe  
10      that that communication has to go to General Counsel?

11           THE WITNESS: Advisors reach out to me all the  
12       time and including, as Mr. Ratcliffe indicated, he had  
13       sent me letters or was cc'd on information that Beau  
14       had sent me; Mr. Ratcliffe has called me directly, et  
15       cetera, to request extensions, for example, on behalf  
16       of his client.

17           So advisors do reach out to me. The role of  
18       advisors is prescriptive in the complaint process, not  
19       every advisor is an attorney. But when an advisor is  
20       either calling me or reaching out from a letter that is  
21       signed, I either write back to the student and cc the  
22       advisor to indicate I'm talking back to the student to  
23       the best of my ability; or in the event that's it's  
24       more appropriate for General Counsel to respond, I  
25       reach out to General Counsel and say can you follow-up

1 to this letter if the response is more appropriate to  
2 go to the attorney directly.

3 So that's generally how those things are  
4 handled. In that case, the reference that  
5 Mr. Ratcliffe raised yesterday, I was trying to not  
6 write back to Laura so, therefore, most of what she  
7 contained in the letter and in the statement was the  
8 same and was addressed by Djuna's next draft and,  
9 therefore, I didn't have to communicate with her again.

10 THE COURT: Okay. I think that's all I have.

11 Do either of you feel compelled to follow-up on  
12 anything I asked about?

13 MR. RICHARD: None for Brown, your Honor.

14 MR. RATCLIFFE: No, your Honor.

15 THE COURT: Okay. I think we're right on time.  
16 You may step down. Thank you very much.

17 All right. I think we'll take our morning  
18 break. We'll just take ten minutes and then we'll  
19 reconvene. Okay?

20 (Recess.)

21 THE COURT: Mr. Ratcliffe, are you ready to call  
22 your next witness?

23 MR. RATCLIFFE: Yes. Djuna Perkins.

24

25 DJUANA PERKINS, PLAINTIFF'S WITNESS, SWORN

1                   THE CLERK: Please state your name and spell  
2                   your last name for the record.

3                   THE WITNESS: Djuna Perkins, P-E-R-K-I-N-S.  
4                   First name, too? D-J-U-A-N-A.

5                   THE COURT: Good morning, Ms. Perkins.

6                   THE WITNESS: Good morning.

7                   THE COURT: You may inquire, Mr. Ratcliffe.

8                   DIRECT EXAMINATION BY MR. RATCLIFFE

9                   Q. Good morning, Ms. Perkins.

10                  A. Good morning, Mr. Ratcliffe.

11                  Q. So you're an attorney?

12                  A. Yes.

13                  Q. And you graduated from Boston University in 1992?

14                  A. Yes.

15                  Q. And your first job out of law school was as an  
16                   assistant attorney general in Massachusetts?

17                  A. Yes.

18                  Q. And you were employed as an assistant attorney  
19                   general from 1993 to 1997?

20                  A. Yes.

21                  Q. And you also worked in the Suffolk County District  
22                   Attorney's Office?

23                  A. Yes.

24                  Q. And you worked primarily with domestic violence  
25                   matters in the Suffolk County District Attorney's

Office?

A. Yes.

Q. In fact, your final position was the role of the Chief of the Domestic Violence Unit?

A. Yes.

Q. As the Chief of the Domestic Violence Unit, what did you do?

A. I investigated and prosecuted and supervised the prosecution of hundreds of cases of domestic violence, including those involving sexual assault throughout Suffolk County, which included the City of Boston, involving sexual violence and domestic violence.

Domestic violence including sexual assault.

Q. And then you had a period of time after leaving the District Attorney's Office with a private firm in Boston?

A. Yes.

Q. And at that firm, you continued to have involvement with respect to domestic violence issues?

A. Not so much domestic violence issues as sexual assault issues.

Q. And in 2012, you started your own practice?

A. Yes.

Q. And you focused on sexual misconduct in schools?

A. And workplaces, yes.

1 Q. And you've done Title IX investigations before?

2 A. Yes.

3 Q. And this was your -- you were retained to do a  
4 Title IX investigation at Brown University?

5 A. Yes.

6 Q. This was your first Brown case?

7 A. Yes.

8 Q. And you were contacted by Amanda Walsh?

9 A. Yes.

10 Q. And you and Amanda Walsh, your paths have crossed  
11 in the past?

12 A. Yes, professionally.

13 Q. Presenting at conferences? How did your paths  
14 cross?

15 A. I know that I got to know her when I was at the  
16 firm. I don't know what year and what the precise  
17 circumstances were. I just have a memory in my mind of  
18 knowing who she was and knowing her and her work.

19 Q. And her and her work was what?

20 A. At the time, she worked at the Victim Rights Law  
21 Center.

22 Q. And what's your understanding of what the Victims  
23 Rights Law Center is?

24 A. It's a non-profit that provides legal assistance  
25 to victims of sexual violence.

1 Q. Now, you were retained by Brown University?

2 A. Correct.

3 Q. And you prepared a retainer letter?

4 A. Yes.

5 MR. RATCLIFFE: Exhibit 9.

6 Q. Showing you what's previously entered as a full  
7 exhibit as Exhibit 9, do you recognize that document?

8 A. Yes.

9 Q. It says, "DP Law Engagement Agreement." Did you  
10 prepare this document?

11 A. Yes.

12 Q. It went back and forth. Some changes requested by  
13 Brown and eventually you had a final, right?

14 A. I think that there was only one round of requested  
15 changes.

16 Q. But it wasn't as if you sent a document to Brown,  
17 and then Brown just executed it? They commented and  
18 sent it back to you with a couple of changes?

19 A. Correct. There were some minor changes.

20 Q. And this document indicates what your role is,  
21 does it not?

22 A. Yes.

23 Q. And you were not being hired as an attorney?

24 A. Correct.

25 Q. You were being hired for fact-finding services?

1 A. Yes.

2 Q. And what is fact-finding services?

3 A. Investigating reports of sexual misconduct.

4 Q. Okay. But what particular with respect to  
5 investigating reports of sexual misconduct?

6 A. So I see it as my role to identify relevant  
7 witnesses, to interview all those relevant witnesses,  
8 to review -- to request, identify and request any  
9 documents I think might be relevant and to evaluate  
10 that evidence. Generally, I look to the Generally  
11 Accepted Rules of Evidence even though those are not  
12 required to be followed in Title IX cases, but I  
13 generally do keep those in mind.

14 I try to evaluate evidence, at times comment on  
15 credibility. Some of the issues depend on -- make  
16 findings of fact. I'm sorry.

17 Q. In deciding what to do for a particular  
18 institution, do you look at any documents?

19 A. Yes.

20 Q. And what do you look at?

21 A. I typically will look at the initial complaint,  
22 whatever it is, how ever it is that it had come into  
23 the institution. I look at the policies, the current  
24 policy. That's more important when I'm making a --  
25 when I'm analyzing the facts as they apply to the

1 policy. Some schools like Brown, my role is only to  
2 fact-find. It's not to draw any what we would call the  
3 equivalent of legal conclusions.

4 Q. You said your role was to fact-find, not to draw  
5 any legal conclusions?

6 A. Correct.

7 Q. In fact, that was specifically conveyed to you by  
8 Amanda Walsh, correct?

9 A. Correct.

10 Q. And that's a conclusion that you drew from  
11 reviewing the Brown University's Title IX complaint  
12 policy also?

13 A. I believe that actually Amanda just told me that.  
14 That's a question that I typically would ask, you know,  
15 exactly what am I doing. So I think that that's where  
16 my first knowledge of my role came.

17 Q. Now, after receiving -- before executing the  
18 engagement agreement, did you receive any documents  
19 regarding the complaint that you were engaged to  
20 investigate?

21 A. I don't believe so. I believe we did the  
22 engagement agreement first and then Amanda sent the  
23 initial documents on the case.

24 Q. So the engagement agreement is dated November 4,  
25 2015?

1 A. Yes.

2 Q. And I believe that the e-mail you had a couple of  
3 days before you got the engagement letter back, signed  
4 engagement letter back to Amanda?

5 A. Yes.

6 Q. And it looks like you got it back on the 6th of  
7 November at 10:45 a.m.?

8 A. Yes.

9 Q. And at that point -- so is the first document you  
10 received the -- and we're not using any last names  
11 here, so you had received Allie's complaint?

12 A. I believe so.

13 Q. You didn't receive Allie's complaint and Beau's  
14 response at the same time, did you?

15 A. I may have received it the same day but in two  
16 separate e-mails.

17 Q. So did you do anything to begin the investigation  
18 immediately upon sending the signed retainer agreement  
19 back to Brown University?

20 A. I couldn't have until I got their contact  
21 information.

22 Q. So there was some sort of a time lag?

23 A. Yes. I believe so. Between the time that we  
24 signed the engagement letter and the time that Amanda  
25 sent me those initial documents.

1       Q.    So what's your best memory of what you received in  
2       your initial packet from Amanda?

3       A.    I believe that there were two e-mails that Amanda  
4       sent on the same day.  Each contained the -- the  
5       complainant's contained the complaint and the exhibits  
6       attached to the complaint.  And then another e-mail  
7       contained your client's response to the complaint as  
8       well as the exhibits that he attached.

9       Q.    Now, when you received the response from my  
10      client, Beau, were there additional e-mails attached to  
11      his complaint that were not included -- strike that.

12           Did Beau submit e-mails to you that Allie had  
13      not submitted or attached to her complaint?

14       A.    E-mails?

15       Q.    Or text messages.

16       A.    Yes.  Among his exhibits were a complete set of  
17      the texts between the two of them.

18       Q.    And which text messages were not included in  
19      Allie's submission of text messages that were included  
20      in Beau's submission of text messages?

21       A.    So I believe that in her text messages, in her  
22      version of the text messages what was missing is a few  
23      text messages leading up to the night of November 7th  
24      and text messages roughly from after -- I believe her  
25      text messages went from about November 6th to around

1 the middle of November or something.

2 Q. And is it your memory that the majority of the  
3 text messages not submitted by Allie related to  
4 post-encounter communications between Allie and Beau?

5 A. Yes.

6 Q. And those post-encounter communications show  
7 that -- what did those post-encounter communications  
8 show?

9 A. In general, they just showed that the complainant  
10 seemed to continue to be interested in the respondent  
11 after that encounter that night; that she would  
12 periodically reach out to him to initiate contact; and  
13 that he pretty clearly rejected her fairly quickly  
14 afterward.

15 There were a few cordial messages kind of in the  
16 spring. There was one conversation about the fact that  
17 he had been upset with her for what he called spreading  
18 rumors about him. And she responded and apologized.  
19 That was the basic substance of what was in those text  
20 messages, at least from the ones that Beau had  
21 submitted.

22 Q. Do you recall that even up until Beau's birthday  
23 in March of 2015, she actually sends him a happy  
24 birthday text message?

25 A. Yes.

1 Q. And that's, I believe, March 31st?

2 A. I don't know what the date was, but that sounds  
3 right.

4 Q. Did you ever inquire of Allie as to why she didn't  
5 include post-encounter text messages with her  
6 complaint?

7 A. I did not. I don't think I realized until after I  
8 really had a chance to go over the text messages in  
9 depth. There were many, many of them so I wasn't quite  
10 digesting it all until toward the end of the  
11 investigation. However, she had told me the substance  
12 of many of those things. And I believe I did ask her  
13 about the substance of those missing text messages and  
14 she acknowledged that they had taken place.

15 Q. She had acknowledged they had taken place after  
16 Beau had submitted the text messages; correct?

17 A. Yes.

18 Q. So you never inquired of her as to whether or not  
19 she decided not to include the post-encounter text  
20 messages because it was evidence that the encounter  
21 was, in fact, consensual?

22 A. I'm sorry. Could you repeat the question.

23 Q. Obviously, an inference could be drawn from the  
24 post-encounter text messages that the encounter on  
25 November 10, 2014, was consensual; correct?

1 A. Could an inference be drawn? Maybe. Maybe not.

2 Q. Well, okay. The text messages indicate that the  
3 complainant is continually contacting the respondent  
4 and being extremely cordial?

5 A. Correct. Well, not always but in general, yes.

6 Q. In general, yes. And that they -- and that she  
7 is -- and I believe you've stated that she is actively  
8 pursuing him?

9 A. I should correct that and say she was certainly  
10 interested in a relationship with him and did reopen  
11 communications from time to time.

12 Q. And you've been involved in numerous --  
13 investigation of numerous sexual assault cases;  
14 correct?

15 A. Yes.

16 Q. And in fact, I believe you said you -- by the time  
17 you were engaged by Brown, you probably handled 40  
18 Title IX investigations?

19 A. Yes.

20 Q. That was at your deposition; correct?

21 A. Yes.

22 Q. So in your experience as a Title IX investigator  
23 involving college students, is it common for a  
24 complainant after an alleged assault to continue to  
25 pursue the respondent for a relationship?

1       A. I don't know if the word is "common," but it  
2       certainly does happen. I certainly have seen it many  
3       times.

4       Q. Now, in this case, my question to you, and I don't  
5       know if you answered it, was an inference could be  
6       drawn, could it not, that Allie did not provide the  
7       post-encounter text messages because they didn't help  
8       her case?

9       A. Perhaps, yes.

10      Q. Well, you say perhaps. Did you think that the  
11       post-encounter text messages helped Allie's case?

12      A. I wasn't asked to draw that -- to have an opinion  
13       about that.

14      Q. You weren't asked by Brown to have an opinion  
15       about that?

16      A. Right.

17      Q. Because you weren't asked by Brown to have an  
18       opinion about any legal issues?

19      A. I was not asked by Brown to draw an ultimate legal  
20       conclusion about whether the facts violated the policy.

21      Q. I believe you testified, did you not, that Amanda  
22       Walsh told you that your sole role was as a  
23       fact-finder?

24      A. Yes. But there's obviously some -- obviously, I  
25       have legal framework in my brain to a certain extent

1       that is there even in fact-finding.

2       Q.    So I believe you testified that you weren't hired  
3       as -- excuse me. You weren't hired to make a  
4       determination as to whether or not the text messages  
5       that post-date the encounter helped or hindered Allie's  
6       case; correct?

7       A.    Correct.

8       Q.    And but as you said, you're a fact-finder but you  
9       also have some legal framework with respect to that;  
10      correct?

11      A.    Correct.

12      Q.    And you've tried cases?

13      A.    Many.

14      Q.    And when you were a prosecutor trying domestic  
15       violence cases, if there was evidence after an alleged  
16       assault that the complaining witness continued to  
17       pursue the defendant in a criminal case, that's  
18       something that you believed would help your case or  
19       hurt your case?

20      A.    In general, based on my knowledge of juror  
21       perceptions about sexual misconduct and sexual assault,  
22       I would think that it would hurt my case. However,  
23       there's also a jury -- any panelist, fact-finder could  
24       decide to accept the explanation given by the person  
25       who pursued the relationship afterward. So it could go

1 either way.

2 Q. So Allie, as someone who's not a trained attorney  
3 and someone just, you know, putting together a  
4 complaint, do you think it would be reasonable for --  
5 would it be reasonable for Allie to conclude that she  
6 looks at all the messages and she says these messages  
7 after this date don't help me? Would that be a  
8 reasonable conclusion for Allie to draw?

9 A. It's pretty hard for me to speculate what would be  
10 reasonable for her.

11 Q. Well, a person in her position, not an attorney?

12 A. It could be. First of all, she always accepted  
13 that those -- I believe that she may have told me in  
14 her very first interview that she was looking --  
15 because I believe I asked whether there was contact  
16 afterward and why. I believe that she said that she  
17 wanted a relationship with him.

18 So whatever was in those text messages, the fact  
19 that she didn't include them didn't really detract from  
20 what she had already conceded, which is that she was  
21 interested in pursuing a relationship with him.

22 And I should also say that she was represented  
23 by counsel. I have no idea what their conversations  
24 were or what their strategies were, so I don't know if  
25 this is something that -- if that decision to leave

1       those messages out was hers and something that she did  
2       -- I'm sorry. Or something that she did on advice of  
3       counsel.

4       Q.     In any event, in your role as fact-finder, you  
5       never inquired as to the basis for leaving them out?

6       A.     Correct. But I did include in my report the fact  
7       that they had been left out by her so that the panel  
8       could consider that.

9       Q.     You included in your report that she agreed that  
10      those text messages that Beau provided were accurate  
11      text messages?

12      A.     I also included in the report the fact that she  
13      had not included the post-incident text messages in her  
14      exhibits so that the panel could weigh for themselves  
15      whether that was material or not.

16                    MR. RATCLIFFE: I'd move to strike that last  
17      comment, your Honor.

18                    I'll withdraw it.

19                    THE COURT: Overruled.

20      Q.     So the complaint in this matter involved a single  
21      encounter on November 10, 2014; correct?

22      A.     Yes.

23      Q.     Okay. And so what did you do to investigate this  
24      complaint?

25      A.     First I read both -- all the materials submitted

1 by both students. I then met with the complainant and  
2 interviewed her at length. And she was there with her  
3 attorney. I think her attorney was actually present by  
4 phone. I then interviewed your client. I believe that  
5 there was some delay in our ability to get -- to  
6 interview him so I may have interviewed some of the  
7 witnesses in between. I can't quite recall. But the  
8 report lists the dates of all the interviews so that  
9 would be easy to look at.

10 I then interviewed I want to say 13 or 14  
11 witnesses, but of course all of that is in the report  
12 as well. I reviewed documents and then I remet -- you  
13 know, after I met with the respondent, I interviewed,  
14 reinterviewed the complainant so that she would have an  
15 opportunity to respond to additional material that the  
16 respondent had raised. I also interviewed the  
17 respondent a second time as well.

18 Q. Now, after you interviewed everybody and looked at  
19 all the evidence, you prepared a report?

20 A. Yes.

21 Q. And that's your role -- that's what you were hired  
22 to do?

23 A. Yes.

24 Q. Now, I am showing you what's been previously  
25 introduced as a full exhibit, Exhibit Number 10 in this

1 matter, and ask you if you recognize that document.

2 A. I do.

3 Q. What is it?

4 A. It appears to be the final version of the report.

5 Q. Are you sure about that? Let me bring this up a  
6 little bit.

7 A. Oh, I'm sorry. It looks like it's the draft  
8 report that I submitted to Amanda.

9 Q. And this draft report to your knowledge wasn't  
10 shared with either the complainant or the respondent?

11 A. Correct.

12 Q. And did you know from Amanda ahead of time that  
13 this draft report was basically for her eyes only?

14 A. No.

15 Q. So you just -- you sent the report to her and you  
16 didn't --

17 A. I didn't know who she would share it with, no.

18 Q. All right. Now, in the draft report, you refer to  
19 Section III, Relevant Policy Sections?

20 A. Yes.

21 Q. And you're referring to the Title IX Brown  
22 University's Sexual and Gender-Based Harassment, Sexual  
23 Violence, Relationship and Interpersonal Violence and  
24 Stalking Policy?

25 A. Yes.

1 Q. Why did you refer to those sections?

2 A. When I was preparing to write the report, Amanda  
3 said that the University had a format, a template of  
4 the report that had particular sections in it and they  
5 wanted me to use that. So I received a template of a  
6 report from another investigator in the office,  
7 Jessica -- I'm sorry, at Brown, Jessica Katz. That  
8 template had this paragraph three in it that said  
9 Relevant Policy Sections. I think that -- so I just  
10 modified that template to fit as best I could what was  
11 in -- what was relevant to this case.

12 Q. So when you said the template had relevant policy  
13 sections, it had -- that's something that you would --  
14 you would include relevant policy sections in your  
15 report; correct?

16 A. Correct. But for me, they were not particularly  
17 relevant because I was not analyzing whether or not the  
18 policy -- the facts violated the policy. It was just,  
19 I think, to point the panel in the direction of which  
20 policies were at play.

21 Q. But in any event, the template was, just so I'm  
22 clear, the template that you received just said that  
23 you should have a section that says relevant policy  
24 sections; correct?

25 A. No. It was filled in from another -- as if it had

1       been from a different case so I was just deleting  
2 language from that one and inserting new language. I  
3 wasn't sure what -- I didn't know what the old case was  
4 about so I wasn't sure exactly what the -- how much of  
5 the material from the old case was standard or was  
6 particular to that case.

7       Q.     But in any event, when you say you took a  
8 template, you didn't go to the old -- this information  
9 that you said were the relevant policy sections, you  
10 didn't get that information, that exact information  
11 from the prior case; correct?

12      A.     That's true.

13      Q.     So basically, you did some analysis to determine  
14 what the relevant policy sections were?

15      A.     Correct.

16      Q.     And so you looked at the Title IX Policy?

17      A.     I looked at what was on the website, on Brown's  
18 website at the time I was writing the report, which  
19 would have been -- for all I know it's still the one  
20 that's there. But I just used the one that was from  
21 the website because I also knew that Amanda was going  
22 to be reviewing it and would correct any -- if I was  
23 referring to the wrong policy.

24            MR. RATCLIFFE:   Move to strike, your Honor, as  
25 non-responsive.

1                   THE COURT: I'll strike it. The question was  
2 did you look at the Title IX Policy. So you can answer  
3 that question and then we'll see where the questions go  
4 from there.

5                   A. I looked at the Title IX Policy that was on the  
6 website at the time I wrote the report, on Brown's  
7 website.

8                   MR. RATCLIFFE: Exhibit 4.

9                   Q. I'm showing you what's been previously marked and  
10 introduced as Exhibit 4. Is that what you looked at on  
11 Brown University's website?

12                  A. Not in this format. And I cannot say that I  
13 looked at it -- that I read it word-for-word. But it  
14 appears to be a Title IX Policy of Brown University.

15                  Q. So I just want to get your methodology down. So  
16 you went to the Brown University -- actually went to  
17 the Brown University website to pull up the Title IX  
18 Policy on the website?

19                  A. Yes.

20                  Q. And you then went to look for what offense would  
21 be the sexual misconduct offense; correct?

22                  A. Correct.

23                  Q. And you drew the conclusion that the operative  
24 offenses were VII(a) and VII(b)?

25                  A. Yes.

1       Q.    And you also drew the conclusion that they were  
2       relevant definitions?

3       A.    Yes.

4       Q.    And those are -- I believe my prior question was  
5       that you went to the Brown University website to  
6       determine which provisions of the policy, the Title IX  
7       Policy would apply to the -- would be the relevant  
8       policy sections?

9       A.    Yes.

10      Q.    And you determined that VII(a) and VII(b) were the  
11       offenses, VII(a) being sexual and gender-based  
12       harassment and VII(b) being sexual assault; correct?

13      A.    Yes.

14      Q.    And then you also referenced definitions as  
15       relevant policies; correct?

16      A.    Yes.

17      Q.    And those definitions were of "consent."

18      A.    Yes.

19      Q.    And you got that definition of "consent" from the  
20       Title IX Policy, right?

21      A.    I didn't include the specific language of the  
22       definition, but yes.

23      Q.    Well, you referenced it?

24      A.    I referenced it, yes, based on what I saw in the  
25       policy on the website.

1       Q.    You also referenced the "consent" definition,  
2   continues to the following page and below that is the  
3   definition VIII(b) for "coercion," you referenced that?

4       A.    Yes.

5       Q.    In any event, you did receive a -- you had some  
6   communication with Amanda Walsh regarding whether  
7   those -- what you referenced as the relevant policy  
8   sections, whether or not they actually were the  
9   relevant policy sections; correct?

10      A.    Yes.

11      Q.    And in fact, Amanda Walsh sent you an e-mail back  
12   telling you that they were not the relevant policy  
13   sections?

14      A.    Yes.

15      Q.    And actually sent you a red-line version of your  
16   report excising those relevant policy sections?

17      A.    Yes.

18      Q.    Now, you prepared a second draft of your report;  
19   correct?

20      A.    Yes.

21      Q.    And that was shared with the complainant and  
22   respondent?

23      A.    Yes.

24      Q.    And --

25      A.    First I believe I sent it to Amanda.

1       Q.    So you sent it to Amanda and then Amanda approved  
2       it and then you sent it to the students?

3       A.    I can't recall if I sent this version to the  
4       students. There was some back and forth about  
5       redaction and who was going to do the redaction, but,  
6       yes, ultimately Amanda approved the revisions and then  
7       it was sent to the students.

8       Q.    The report that was shared with the students, the  
9       relevant policy sections, do you recall what relevant  
10      policy sections you included in your interim or the  
11      second draft?

12      A.    I don't recall specifically what the, you know,  
13      section and numbers were, but they were the correct  
14      version as to what was applicable to the case.

15      Q.    And that was the 2014-'15 Code of Student Conduct?

16      A.    Correct.

17      Q.    Now, I believe you had discussions with Amanda  
18      Walsh regarding whether or not you should actually  
19      include the entire section of the -- when you're  
20      including relevant -- the relevant policy sections,  
21      whether or not you should actually put the whole  
22      relevant policy section or reference the entire  
23      relevant policy section in your report, did you not?

24      A.    You mean the language?

25      Q.    The language, like actually copy it.

1 A. I don't recall.

2 Q. Isn't it true that Amanda Walsh told you that --  
3 you didn't put it in because Amanda Walsh told you that  
4 the panel would have the proper policy in front of them  
5 and didn't need to be in the report?

6 A. That sounds right.

7 Q. Is it right?

8 A. As I said, I don't recall specifically, but it  
9 sounds reasonable.

10 Q. Do you recall -- did you testify -- do you recall  
11 testifying at your deposition that I believe that  
12 Amanda -- basically that Amanda -- that the panel would  
13 have the Code in front of them?

14 A. Yes.

15 Q. Okay. And that because the panel would have the  
16 Code in front of them, they didn't need it to be  
17 rewritten in the report?

18 A. I don't recall testifying that at my deposition.

19 Q. Top of page 49?

20 THE COURT: Why don't you use the ELMO so we can  
21 all see it.

22 A. Okay.

23 Q. I'll go to the bottom of 48.

24 A. Oh, okay. I did. I stand corrected.

25 Q. "Did you have any discussions with Amanda as to

1       why not to include the text of the policy?" And you  
2       responded, "No." And then you said, "Well, I think  
3       that we maybe did. Maybe she said -- I believe she  
4       might have said that the panel would have the Code, the  
5       relevant full Code with them so we didn't need the  
6       text."

7       A. I'm sorry. Where are you?

8       Q. Top of the page.

9       A. I can't see the top.

10           Yes, I said that.

11       Q. So basically, you didn't put the reference to the  
12       text of 2014 Code because Amanda told you that the  
13       panel would have that?

14       A. Yes.

15       Q. Now, after your initial report was shared with the  
16       students, each student provided comments; correct?

17       A. Yes.

18       Q. And there were a number of comments provided by  
19       Beau; correct?

20       A. Yes.

21       Q. Okay. I'm showing you what has been previously  
22       marked as Exhibit 16. Do you recognize that e-mail?

23       A. Yes.

24       Q. And that's an e-mail from Beau to you regarding  
25       his requested revisions to the investigative report?

1 A. Yes.

2 Q. Show you the bottom of the page. So Beau was  
3 concerned about reference in your report to coercion;  
4 correct?

5 A. Yes.

6 Q. And he indicates that (Reading:) Quite a bit of  
7 your report, including Footnote 22, focuses on the  
8 possibility that I coerced Allie to engage in sexual  
9 conduct. That, however, is not part of the 2014  
10 definition of this offense. The term "coerce" does not  
11 appear in that definition so I respectfully suggest  
12 that your statement in Footnote 22 that the central  
13 issue in this case is whether the consent was obtained  
14 through coercion is incorrect.

15 In any event, because panels are now trained to  
16 apply a different definition of sexual misconduct than  
17 what applied in my case, this distinction is important  
18 and should be conspicuously set forth in your report.  
19 Furthermore, your report does not contain a definition  
20 of "coercion," which is the use of force or  
21 intimidation to obtain compliance. There's absolutely  
22 no evidence that I intimidated or threatened the  
23 complainant in order to satisfy my sexual desires.

24 How did you address that comment?

25 A. I addressed it by including the information that I

1 think is now part of Footnote 26 in the final version  
2 of the report.

3 Q. Is it your memory that the draft investigative  
4 report contained 28 pages?

5 A. That sounds right.

6 Q. And that the final investigative report contained  
7 29 pages?

8 A. That sounds right.

9 Q. So Exhibit 13 has previously been introduced as  
10 the draft report. Now, Footnote 22 is, (Reading:)  
11 The messages in this document are not dated but --  
12 redacted -- recalled receiving a series of text  
13 messages along these lines on December 29, 2014.

14 So that references text messages between Allie  
15 and Witness 9; correct?

16 A. Correct.

17 Q. And I believe that Allie submitted text messages  
18 to you to show that sometime in December of 2014 she  
19 began to communicate with Witness 9 regarding the  
20 circumstances of what happened on November 10, 2014?

21 A. I can't specifically recall whether she said what  
22 the purpose of giving them, submitting them was, but I  
23 think that they actually, based on the text messages  
24 and the statements of both students said that they  
25 began communicating about it, whether verbally or by

1 text, in November.

2 Q. And up until that point -- Allie told you that the  
3 first person that she told that -- strike that.

4 There was evidence from other witnesses that you  
5 interviewed that Allie had referred to the encounter  
6 between she and Beau as a hookup?

7 A. Yes.

8 Q. And that those witnesses drew their conclusion  
9 based on Allie's statement that any sexual activity  
10 that had occurred was consensual?

11 A. Yes.

12 Q. And at some point, Allie starts to communicate  
13 with Witness 9 about Beau?

14 A. Yes.

15 Q. And at some point, Allie says to Witness 9 what  
16 happened in the room really wasn't consensual. He  
17 coerced me into having sex or having sexual relations,  
18 words to that effect; correct?

19 A. Yes.

20 Q. Okay. And this Footnote 22 is addressing --  
21 first, it's addressing Beau's request that if Allie is  
22 going to give you text messages between she and Witness  
23 9, she should give you the entire set of text messages;  
24 correct?

25 A. I'm sorry. Could you repeat that.

1       Q.    Beau wanted all of the text messages during that  
2       timeframe between Witness 9 and Allie; correct?  
3       A.    Yes.

4       Q.    And the reason that he was asking for those was,  
5       one, because Allie had submitted certain texts? She  
6       gave you certain texts, communications between she and  
7       Witness 9?

8       A.    Is that the question? Yes, she did.

9       Q.    And those texts supported those allegations  
10      because she's saying what really happened in the room  
11      wasn't consensual?

12      A.    She may have, yes.

13      Q.    Well, the text messages between Witness 9 and  
14      Allie and I believe you refer to them in your  
15      deposition as sort of a fresh complaint, did you not?

16      A.    Yes.

17      Q.    What is a fresh complaint?

18      A.    Well, in Massachusetts now we actually call it  
19      first complaint, but fresh complaint is basically  
20      evidence given to a first report or a fresh report of  
21      sexual assault to another person.

22      Q.    So this is her first report of sexual assault to  
23      her friend, Witness 9?

24      A.    It may have -- I believe that that was the first  
25      time she referred to it as a sexual assault. It was

1 not the first time she had discussed it.

2 Q. Well, in any event, you recall the text messages  
3 and at one point does not Witness 9 says, OMG, my God,  
4 he assaulted you, or words to that effect?

5 A. Correct.

6 Q. So Beau asked you, did he not, look, you've got --  
7 Allie gave you certain text messages between she and  
8 Witness 9. Let's get all the text messages.

9 A. He did ask for that.

10 Q. Okay. And you did not make any attempt, did you,  
11 to get all the text messages?

12 A. Correct.

13 Q. And that's because you didn't think they were  
14 relevant?

15 A. Not based on what Beau -- not based on the reasons  
16 Beau gave for requesting them.

17 Q. And the reasons that he gave for requesting them  
18 were what?

19 A. He said that they would be -- provide great  
20 context and information relevant to the complaint.

21 Q. And upon what -- you're the fact-finder?

22 A. Correct.

23 Q. Upon what facts did you determine that they would  
24 not provide great context and be relevant to an  
25 analysis of the complaint?

1       A. I first looked at -- from Beau's point of view, on  
2 his best day what would he be hoping for to find in  
3 those text messages. And given the evidence that  
4 already existed, that is that she couldn't stand him;  
5 that she first came to the apparent realization that  
6 this was a sexual assault when Witness 9 told her, OMG,  
7 what you're saying is a sexual assault, she's already  
8 locked herself into a version of events with Witness 9.  
9 It was very unlikely, given that, that there would be  
10 any other evidence in the text messages that would  
11 contradict that version of events.

12           There was also already plenty of evidence that  
13 showed that she was very angry at him; that she still  
14 wanted to be with him after the event occurred. There  
15 was plenty of evidence that any panel could point to to  
16 say this was, in fact, a consensual event. Therefore,  
17 the likelihood of finding any additional helpful  
18 information that would further that case was very  
19 small. And I felt that it was intrusive on the part of  
20 both students without more specific reasons than what  
21 Beau had given.

22       Q. So you knew that you had Allie, who when she  
23 initially filed her complaint didn't give you all of  
24 the relevant communications between she and Beau?

25       A. Correct.

1       Q.    And you now have Allie giving you communications  
2       between she and Beau to establish this fresh complaint,  
3       but she doesn't give you the entire universe of those  
4       communications?

5       A.    Correct.   But the important question was what  
6       would be in those missing text messages.

7       Q.    And because you didn't get them, you don't know,  
8       do you?

9       A.    Correct.

10      Q.    And there's a lot of your report that deals with  
11       Beau's conspiracy allegation?

12      A.    I would not characterize it that way, no.

13      Q.    Well, there's -- let's just get back to what we  
14       were discussing on Footnote 22.

15           So the messages in this document are not dated  
16       but Allie recalled receiving a series of text messages  
17       along these lines on December 29, 2014.   The  
18       respondent -- I believe that should be Witness 9,  
19       recalled receiving a series of text messages along  
20       these lines on December 29, 2014.

21           The respondent requested a complete set of  
22       electronic communications between the complainant and  
23       Witness 9 to support his claim that the two conspired  
24       to fabricate the claims against him.

25           As discussed further below, Witness 9 and

1 complainant fully admit that the respondent's behavior  
2 was a frequent subject of discussion and they both  
3 fully admit that they harbor significant animus towards  
4 him. Neither is enough to suggest that the complainant  
5 fabricated the facts underlying the allegations of the  
6 complaint as the complainant's reaction is a typical  
7 response to perceived inappropriate behavior.

8 More importantly, asking the complainant and  
9 Witness 9 to disclose all their communications is  
10 overly burdensome where a central issue in this case is  
11 not whether certain sexual acts occurred or even  
12 whether the complainant literally consented to them,  
13 but whether a consent was obtained through coercion.

14 Given the number of interviews and documents  
15 reviewed in this case, complete communications between  
16 Witness 9 and the complainant are unlikely to lead to  
17 the discovery of any non-duplicative evidence that  
18 tends to undermine the complainant's claim that she was  
19 coerced.

20 So your conclusion as the fact-finder was that  
21 the central issue in the case was whether or not Allie  
22 was coerced into having sexual relations with Beau on  
23 November 10, 2014?

24 A. Well, it was whether or not it was consensual, but  
25 consensual consent includes coercion.

1       Q.    You're the one that says the central issue is  
2       whether or not she was coerced?

3       A.    Correct.

4       Q.    And actually, the central issue in the case, was  
5       it not, as to whether or not there was a violation of  
6       the 2014-'15 Code of Student Conduct, which references  
7       non-consensual sexual conduct; correct?

8       A.    Both statements are true.

9       Q.    Well, in your report, the relevant policy section  
10      that you reference is III(a) and III(b); correct?

11      A.    You mean in the final version of the report?

12      Q.    Yes. Or in the interim version, not the one that  
13      just went to Amanda Walsh, but the one that the  
14      students received.

15      A.    Correct.

16      Q.    And the offense is non-consensual physical contact  
17      of a sexual nature or sexual misconduct that includes  
18      penetration; correct?

19      A.    According to what is listed here, yes.

20      Q.    Did you read that when you prepared your report?

21      A.    I may not have. I may have -- I'm sure I scanned  
22      it at some point during the investigation.

23      Q.    So I'm just -- you prepared a report saying what  
24      the central issue is, but is it your testimony that  
25      prior to stating that the central issue in the case is

1       whether or not there was -- the sexual conduct was  
2       induced by coercion, you hadn't read this policy Code?  
3       A.    No. I had read it. I just hadn't delved into it  
4       particularly.

5       Q.    Okay. So what do you mean you hadn't delved into  
6       it particularly?

7       A.    I had read it to see what was there, but it's not  
8       like I sat and analyzed it particularly.

9       Q.    Well, there's a comment to the Code; correct? Do  
10      you recall reading that?

11      A.    What did you say?

12      Q.    Do you recall reading the comment to the Code of  
13      Conduct, Code of Student Conduct -- did you read this  
14      comment?

15      A.    Did I read the comment?

16      Q.    Yes.

17      A.    Probably.

18      Q.    And do you recall whether the comment referenced  
19      coercion?

20      A.    I don't recall. I mean, I can read it and tell  
21      you if it does but --

22      Q.    So I just want to get how you went about drafting  
23      that Footnote 22 and what you looked at. You don't  
24      actually recall in determining what the central issue  
25      in the case was looking at the Code itself?

1       A. I don't have a specific recollection. I do recall  
2 talking to Amanda about it.

3       Q. Okay. Tell us about those communications.

4       A. So we had a conversation about Beau's comments on  
5 the report and how to respond to them and whether one  
6 of them was about this Footnote 22. I believe we had a  
7 conversation about whether or not the '14-'15 Code  
8 specifically outlined -- had coercion in it as part of  
9 the Code. Amanda said that it didn't but that the  
10 University felt comfortable that it was included in a  
11 broader sense within the general definition of  
12 "consent" in the '14-'15 Code. So that was the basis  
13 on which I wrote the footnote.

14       Q. And did -- Amanda didn't tell you the basis for  
15 her drawing that conclusion, did she?

16       A. No.

17       Q. And I believe that -- now, does coercion require  
18 fear?

19       A. It depends on the definition.

20       Q. Okay. So in fact, you testified at your  
21 deposition, did you not, that coercion depends on the  
22 way the institution defines it so far as it may or  
23 might not require placing the victim in fear.

24       A. Physical fear. If I didn't say physical fear, I  
25 meant that's what it meant.

1       Q.    Do you want me to bring that up on the screen?

2       A.    Sure.

3       Q.    "Question: So it's your testimony that coercion,  
4       in order to have coercive conduct the person being  
5       placed under, being coerced, does not have to act out  
6       of any fear?"

7               And then what your response is: "I mean, as I  
8       said, it depends on the way the institution defines it.  
9       Some define it as, you know, the difference in social  
10      status. I suppose fear of social pressure. I think  
11      it's better fear, social or some kind of pressure,  
12      whether it's financial or physical or some other kind  
13      of social pressure."

14              So coercion involves being placed in some type  
15      of fear?

16       A.    Yes.

17       Q.    And is it your testimony that whether or not that  
18      fear is -- some universities say the fear has to be  
19      physical fear?

20       A.    Yes.

21       Q.    And some universities say it could be this other  
22      social type fear?

23       A.    Yes.

24       Q.    But Brown didn't define, at least in 2014 -- well,  
25      actually in 2014-'15, they didn't define -- I mean,

1       "coercion" was nowhere in the Code of Student Conduct  
2       in 2014-'15; correct?

3       A.     The word "coercion" was not in there I don't  
4       believe.

5       Q.     In any event, Brown didn't define what type of  
6       fear, whether it be this social fear or physical fear?

7       A.     Didn't define "fear"?

8       Q.     Well, there was no -- somebody in Beau's  
9       situation, you said in your report -- Beau gets your  
10      report and you say the central issue is coercion;  
11      correct?

12      A.     Yes.

13      Q.     And so Beau reading that, what does she mean by  
14      "coercion"? There's nothing in your report that says  
15      what type of fear or even if fear is required; correct?

16      A.     Correct.

17      Q.     So he wouldn't know whether or not you're alleging  
18      when you say "coercion" that Allie was actually placed  
19      in fear?

20      A.     I don't know what he would know. He certainly  
21      wouldn't know it from the report, though.

22      Q.     He wouldn't know it from the report. And the  
23      panel wouldn't know it from the report either, would  
24      they?

25      A.     Not from the report, no.

1       Q.    And I believe that when we got on to issue of  
2       fear, Allie expressed different types of, you know, the  
3       fear that she described and I believe it was in your  
4       deposition but we can look at it, but you said that she  
5       was kind of going along to get along?

6       A.    I believe I said that.

7       Q.    And that the second one was she didn't want to  
8       make a big deal out of it, to be a drama queen, words  
9       to that effect?

10      A.    Yes.

11      Q.    The third one was that she felt afraid of him  
12       physically because he was bigger than her and they were  
13       in a small room and that was sort of isolated?

14      A.    Yes.

15      Q.    And the fourth one, that she was going to have to  
16       be around him, that she was going to have to be around  
17       him on mock trial for the next two-and-a-half years and  
18       didn't want to make things socially awkward?

19      A.    Yes. Those are the reasons that she gave that I  
20       reported.

21      Q.    Those are the reasons that she was in fear?

22      A.    Correct.

23      Q.    Those were the reasons that she was -- felt  
24       coerced by Beau on November 10, 2014?

25      A.    Those are the reasons that she said she felt

1 coerced, yes.

2 Q. Did you put those when you defined what "coercion"  
3 was that the fear that she was afraid of was those four  
4 things? Is that in your report?

5 A. Sorry. What is in my report?

6 Q. You admit, do you not, that coercion involves some  
7 type of fear?

8 A. Yes.

9 Q. And the fear would either be physical or some  
10 other social type fear?

11 A. Yes.

12 Q. Now, when you're drafting this footnote regarding  
13 coercion --

14 A. Yes.

15 Q. -- first you didn't state -- you didn't give any  
16 guidance, we've already established that, as to the  
17 type of fear, whether it is physical fear or some sort  
18 of social or emotional fear; correct?

19 A. That was not my role, so correct.

20 Q. That wasn't your role?

21 A. To define "coercion"? No.

22 Q. That's because you're the fact-finder?

23 A. Correct.

24 Q. But it was your role to say that the central issue  
25 in the case -- let me go back to this.

1                   The central issue in this case is not whether  
2 certain sexual acts occurred or even whether the  
3 complainant literally consented to them, but whether  
4 the consent was obtained through coercion.

5                   So that footnote putting the central issue of  
6 the case, is that within your role as a fact-finder?

7   A.   Yes, in a sense because it's sort of guiding the  
8 panel on what facts they need to focus on.

9   Q.   But in guiding the panel, you don't reference what  
10 "coercion" is?

11   A.   Correct. Because that was not for me. That was  
12 for whoever was in charge of the panel during  
13 deliberations.

14   Q.   So it would be for the person in charge of the  
15 panel to tell the panel this is what "coercion" means?

16   A.   Correct.

17   Q.   Well, initially when you sent your report to  
18 Amanda Walsh, you did reference a definition of  
19 "coercion," did you not?

20   A.   If you're talking about paragraph III on the first  
21 page, yes.

22   Q.   Yes. So initially, when you did your report, you  
23 referenced a definition of "coercion," which is in the  
24 2015-'16 Title IX Policy?

25   A.   Because I didn't know that there was any

1 substantive change.

2 Q. That's not what I asked you. I just asked you,  
3 you referenced a definition of "coercion" in the  
4 2015-'16 policy?

5 A. Correct.

6 Q. And that's so when the panel is looking at what  
7 the central issue in the case, which you've said is  
8 coercion, they can have a definition?

9 A. Correct.

10 Q. But when Amanda told you to take out reference to  
11 2015-'16 Code, you didn't put any definition of  
12 "coercion" in your report.

13 A. Correct.

14 Q. So the panel would have no guidance from reading  
15 your report as to what you meant when you said the  
16 central issue was whether or not Allie was coerced?

17 A. They have no guidance from the report. They may  
18 have had guidance from other sources.

19 Q. Well, as the fact-finder you realize that in  
20 presenting the report, do you not, that your report is  
21 pretty much all that the panel has?

22 A. No.

23 Q. What else do they have?

24 A. They had a conversation with me. They had a  
25 conversation with both students. And I believe that

1       there were, based on my understanding of the process,  
2       they had conversations with Amanda Walsh and Gretchen  
3       Schultz, I think is her name.

4       Q.     But in preparing for the hearing, what information  
5       would they have as to when you say the central issue is  
6       coercion, what does that mean?

7       A.     I don't know what they would have.

8       Q.     And when you were defining "coercion" and saying  
9       what the central issue is, did you set out or you  
10       didn't set out the type of coercion, the four things  
11       that Allie told you were the fear that she was placed  
12       in by Beau on November 10, 2014?

13       A.     I believe all four of those things are in the  
14       report. They may not be all in one paragraph but they  
15       are all there.

16       Q.     And when you talk about coercion, there's nothing  
17       in the report that would lead the reader to believe  
18       that the fear, these four things that we've discussed  
19       that she felt, were, in fact, reasonable?

20       A.     That was not my role to determine what was  
21       reasonable. That was for the panel.

22       Q.     And you understand, I mean, correct me if I'm  
23       wrong, that generally coercion is that someone is  
24       reasonably placed in fear of imminent harm.

25       Reasonably; correct? It's a reasonable person

1 reasonable standard?

2 A. I'm sorry. What's the question?

3 Q. That coercion is generally a reasonable person  
4 standard, that the person is coerced and is placed in  
5 reasonable fear of immediate or future harm?

6 A. Yes.

7 Q. And you have no discussion at all about whether or  
8 not those things that Allie felt on November 10, 2014  
9 were reasonable, did you?

10 A. Correct. Because that was not my role.

11 THE COURT: Okay. Let's pause here and take a  
12 lunch break. But before we do, and just so it's in the  
13 same place in the record, I want to follow-up on just  
14 one point because I want to make sure I understand your  
15 testimony.

16 Mr. Ratcliffe asked you about four things that  
17 Allie feared. And he was referring to your deposition.  
18 He walked you through those four things. You just said  
19 those are in your report but they're not all in one  
20 specific place. I just want to be clear. Are those  
21 the four things that she described as what she feared  
22 to explain why she engaged in the sexual behavior with  
23 Beau?

24 THE WITNESS: Yes.

25 THE COURT: Okay. They're not fears that she

1       had afterwards about the behavior that occurred  
2       afterwards. It was about this is why I went along and  
3       did what I did that night?

4           THE WITNESS: Correct. It was about --

5           THE COURT: I just wanted to be clear. I  
6       thought that's what you were saying. I just wanted to  
7       be clear on that.

8           We'll take -- I know that you have to get back.  
9       We'll take a one-hour lunch break. I want to try to  
10      get you through this testimony today.

11       THE WITNESS: Okay. Great. Thank you.

12       THE COURT: So we'll be back at 1:30.

13       All right. We'll be in recess.

14       (Lunch recess.)

15       THE COURT: Welcome back, everyone.

16       Mr. Ratcliffe, you can continue now with your  
17      examination. So you may proceed.

18       Q. Prior to the break we were discussing fear, the  
19      four types of fear that Allie had felt that evening on  
20      November 10, 2014; correct?

21       A. Yes.

22       Q. And you said that you didn't reference the fear in  
23      Footnote 22 in your interim or I guess we called it the  
24      initial report or the interim report because it was the  
25      second version, but it's interspersed throughout the

1 report; correct?

2 A. I believe so, yes.

3 Q. I believe you testified, and correct me if I'm  
4 wrong if you didn't, do you recall going to the hearing  
5 on April 14, 2016?

6 A. Yes.

7 Q. And the panel had certain questions for you;  
8 correct?

9 A. Yes.

10 Q. And do you recall being asked a question by KT,  
11 which I believe is Kate Trimble, one of the panel  
12 members, about the basis for the complainant's fear and  
13 she said, That's not leaping out at me? Do you recall  
14 being asked that question?

15 A. Yes.

16 Q. And do you recall how you answered that question?

17 A. Not precisely, no.

18 Q. Do you recall if you said, That's not entirely  
19 clear?

20 A. Yes. Now that you say that.

21 Q. You didn't point her to the provision, to the  
22 parts of your investigation report where you discuss  
23 the basis for Allie's fear that she was going to be on  
24 moot court or a trial team for the next two-and-a-half  
25 years and she didn't want to have this -- more the

1 social type fear; correct?

2 A. I don't think I pointed them to places in the  
3 report where that appeared. I may have said in  
4 substance some of those things.

5 Q. But Amanda's notes just indicate, I can show them  
6 to you, they're not your notes, but is that consistent  
7 with your -- can you see? I'm showing you what was  
8 previously marked as Exhibit 24.

9 A. Yes, I see. It's not reflected in Amanda's notes  
10 whether I highlighted these specific issues; however,  
11 the questions before that I believe was similar in  
12 substance and the panelist asked me if I could clarify  
13 why she didn't get up and leave, and in there I  
14 discussed some of those things.

15 Q. So you told them that she felt like she couldn't  
16 leave because John was standing at the light with her?

17 A. Yes.

18 Q. Well, there was a period of time, I believe you  
19 testified to this at your deposition, that Allie agreed  
20 that there was a period of time between the light  
21 coming on and her going to turn out the light that she  
22 could have left?

23 A. Yes.

24 Q. Okay. And is that in here, that you reference  
25 that in here, that when you responded to the question,

1       please clarify Ann's explanation for why she didn't get  
2       up and leave during the event, you then say, at least  
3       in Amanda's notes, She said she felt she couldn't leave  
4       because John, which would be Beau, standing at light  
5       with her.

6                   So correct me if I'm wrong, I believe what she  
7       told you was that she was performing oral sex on Beau.

8       A.    Yes.

9       Q.    The light came on; correct?

10      A.    Yes.

11      Q.    She walked over to turn out the light; correct?

12      A.    Yes.

13      Q.    And Beau's pants were around his ankles?

14      A.    Yes.

15      Q.    And he moved over to help her because she couldn't  
16       turn out the light?

17      A.    Yes.

18      Q.    And so during the entire period of time that she  
19       was at the light, Beau was not standing next to her;  
20       correct?

21      A.    I think that's probably true, yes.

22      Q.    That's not indicated in your response. You didn't  
23       tell them that, did you?

24      A.    I did not. However, what I told them was that he  
25       was shuffling and his pants were down around his ankles

1       so one could think -- and I'm reading from the exhibit,  
2       one could think he wasn't as free to do something to  
3       her if she tried to leave.

4           I also mentioned the fact that she talked about  
5       them being on mock trial for two-and-a-half years and  
6       wanted to get out of the situation.

7           Sorry. I'm a fast talker.

8           Reading from the exhibit I said, I told the  
9       panel that there was information that his pants were  
10       down and he was shuffling so one could think he wasn't  
11       as free to do something to her if she tried to leave.  
12       She also said they would be on mock trial for  
13       two-and-a-half years and wanted to get out of the  
14       situation without creating some kind of controversy  
15       that would be unfixable.

16       Q. Now, again, I believe you testified, and correct  
17       me if I'm wrong, that you didn't make any -- your  
18       report doesn't have any credibility assessments in your  
19       report; correct?

20       A. I think they do not. It does not.

21       Q. It does not. And at the hearing, you were asked  
22       basically to make a credibility assessment, were you  
23       not?

24       A. I interpreted it as sort of a global credibility  
25       request to assess credibility, yes.

1       Q.    And that's accurately reflected -- if I could just  
2       ask you -- a witness asked, back to coercion, on the  
3       panel, B.R., looks like Besenia Rodriguez, "Can you  
4       provide more information about that last paragraph.  
5       What is the gap between perception of coercion and  
6       coercion that is a policy violation?"

7                   Do you recall that question being asked of you?

8       A.    Yes.

9       Q.    And then you respond, "I think that's really the  
10       ultimate question for the panel. My impression is that  
11       she believes she is telling the truth as does the  
12       respondent. If you have two parties that are both  
13       credible, the question becomes does her truth amount to  
14       a violation. I don't think either are intentionally  
15       lying in this case. Is what she thinks is coercion  
16       really coercion is the question for the panel. And  
17       Gretchen Schultz follows up -- do you recall responding  
18       that way?

19      A.    Yes.

20      Q.    And then Gretchen Schultz follows up, "Doesn't  
21       someone have to be lying? She says she said no and he  
22       said she's an enthusiastic partner." And then you  
23       respond, "If you look at the text messages, it does  
24       show that he is persistently making things sexual.  
25       Even though she is a willing participant at times, he

1       does convert things into something sexual. He did say  
2       he asked for consent and that she was enthusiastic but  
3       that isn't consistent with the text messages where you  
4       can see her hesitation. The idea that she was  
5       willingly jumping into this sexual encounter doesn't  
6       match, but that's for the panel to decide. Her version  
7       appears to be more consistent with the pattern that is  
8       in the text messages. Her actions after the incident  
9       are difficult to reconcile. Specifically, there is the  
10      possibility that she would not have done anything about  
11      it or filed a complaint if a relationship had come from  
12      it. She may say she would have forgiven him or thought  
13      about the incident in a different way.

14           Aren't you, in effect, making the ultimate  
15      decision for the panel when you responded that way?

16    A.    No.

17    Q.    Why not?

18    A.    Because I'm highlighting facts that they can look  
19      at but I clearly say that's for the panel to decide.

20    Q.    Even though you tell them that her version --

21    A.    Appears to be more consistent with the pattern in  
22      the text messages. And they had the text messages to  
23      read for themselves.

24    Q.    And those are the text messages that pre-date the  
25      encounter?

1       A. And post-date. They had all of the text messages  
2       between the parties.

3       Q. So you believe it's your role as a fact-finder to  
4       provide a response such as that to the panel?

5       A. Yes.

6       Q. And that's based on your reading of the complaint,  
7       the Title IX Complaint Policy?

8       A. Yes. And discussions with Amanda.

9       Q. What were those discussions? What did Amanda tell  
10      you with regard to ultimate responsibility?

11      A. Of course that's for the panel to decide.

12      Q. What in your discussions with Amanda led you to  
13      believe that it's proper to say that her version -- he  
14      did say he asked for consent and that she was  
15      enthusiastic but that is inconsistent with the text  
16      messages where you can see her hesitation. The idea  
17      that she was willingly jumping into this sexual  
18      encounter doesn't match but that's for the panel to  
19      decide. Amanda told you that, telling the panel that,  
20      words to that effect were proper?

21      A. Of course not.

22      Q. What did she say?

23      A. I believe in preparation for the hearing, I looked  
24      at the policy that described what would happen at the  
25      hearing. I knew that the panel might ask me some

1       questions. I had no idea what questions they would  
2       have. And at some point, Amanda and I, when I was  
3       writing the report, had talked about how much I should  
4       highlight different kind of inferences that could be  
5       drawn by various pieces of evidence. And she said that  
6       that was okay and appropriate to do as long as I'm  
7       not -- my role is more to highlight for the panel  
8       here's something you could consider. It's up to you to  
9       actually make the final decision.

10      Q. Now, when we were discussing, we went over  
11       Footnote 22 and you said that was replaced by Footnote  
12       27 or 29?

13      A. I believe that Footnote 22 was revised and in the  
14       final version of the report it was renumbered because  
15       of other footnotes and it became, I think, Footnote 26.

16      Q. And what's your memory of what the revision --  
17       let's put up Footnote 26.

18           So Beau requested that you take out Footnote 22  
19       and remove the reference to coercion. And how did you  
20       revise Footnote 22 into Footnote 26, if you recall, as  
21       you look at that?

22      A. I believe I included an excerpt from the 2014 Code  
23       of Student Conduct that defined "consent."

24      Q. Right there?

25      A. Yes.

1       Q. (Reading:) The 2014 Code of Student Conduct  
2 forbids non-consensual physical contact of a sexual  
3 nature. Implicit in any common understanding of  
4 "consent" is that it is freely and voluntary given.  
5 Thus consent obtained by coercion does not constitute  
6 consent.

7               Given the number of interviews and documents  
8 reviewed in this case, the complete communications  
9 between Witness 9 and the complainant are unlikely to  
10 lead to the discovery of any non-duplicative evidence  
11 that tends to undermine the complainant's claim that  
12 she was coerced.

13               So the amendment that you made was that you  
14 referenced the 2014-'15 Code of Student Conduct?

15       A. Yes.

16       Q. And you didn't specify the fear or the  
17 reasonableness of the fear that the complainant would  
18 have had to have experienced in order to be coerced?

19       A. Correct.

20       Q. So it was for the panel just to determine based on  
21 your referencing the 2014-'15 Code as to whether or not  
22 Allie was coerced on the evening of November 10, 2014?

23       A. No. It was up to the Chair of the panel to  
24 appropriately instruct the panel.

25       Q. Appropriately --

1       A.    About what standards to apply.

2       Q.    About whether the coercion, the definition of  
3       "coercion" would include being placed in fear or  
4       reasonable fear of impending future harm or immediate  
5       harm; correct?

6       A.    Yes.

7       Q.    And you viewed it in your role as a fact-finder to  
8       include this information that implicit in any common  
9       understanding of "consent" is that it's freely and  
10       voluntarily given, thus consent obtained by coercion  
11       does not constitute consent.

12       A.    Not exactly. I did not exactly view that as my  
13       role as a fact-finder. There's an awkwardness in the  
14       policy permits the student to respond to the report.  
15       The question that -- the point that Beau was raising in  
16       his response was really more of a legal question. So  
17       Amanda and I talked about it and sort of -- I think I  
18       suggested the response and she agreed that that was an  
19       appropriate response.

20       Q.    So the question that he was raising is that it  
21       shouldn't be there in the first place; correct?

22       A.    Correct.

23       Q.    So he was saying take it out, and basically you're  
24       saying that's why it stays in; correct?

25       A.    I don't know what you mean.

1       Q.    Beau is not saying give me a definition of -- put  
2       a definition of "coercion" in your report, is he?

3       A.    I think he was saying that.  Secondarily to -- I  
4       think the basic gist of it that I recall is him saying  
5       I don't think there should be any coercion stuff in the  
6       report because there was no definition of coercion and  
7       you don't define -- actually, I don't think he even  
8       said -- anyway, obviously the letter that he wrote is  
9       what he said.

10      Q.    I'll put that up.  So what he was saying is you  
11       should take it out; correct?  This first says you  
12       should take it out.  (Reading:)  Quite a bit of your  
13       report including Footnote 22 focuses on the possibility  
14       that I coerced Allie to engage in sexual conduct.  
15       That, however is not part of the 2014 definition.  The  
16       term "coerced" does not appear in the definition.

17           And then he respectfully requests that you take  
18       it out.

19      A.    Right.  So he's saying really based on a legal  
20       issue.

21      Q.    Then goes on to say that, (Reading:)  Furthermore,  
22       the report does not contain a definition of "coercion"  
23       with the use of force or intimidation to obtain  
24       compliance.  There's absolutely no evidence that I  
25       intimidated or threatened the complainant in order to

1 satisfy my sexual desires.

2            Basically he was asking you to put something in  
3 with respect to your "coercion" definition that  
4 indicates there be some fear involved; correct?

5    A. Yes.

6    Q. And you decided not to do that?

7    A. Correct.

8    Q. What you decided to put in was --

9    A. Actually, I'm sorry. What the line says actually  
10 is -- I read this paragraph as asking for a specific  
11 definition of "coercion" that included intimidating or  
12 threatening the complainant to satisfy his sexual  
13 desires, and I was not going to put in a specific  
14 definition because it's not mine to define.

15    Q. Well, you had discussions with Amanda; correct?

16    A. Correct.

17    Q. And you knew that this was an issue?

18    A. Yes.

19    Q. Well, you had said it's the central issue?

20    A. Yes.

21    Q. And you're saying that the central issue of the  
22 case is coercion; correct?

23    A. Yes.

24    Q. And you've admitted that there are different  
25 understandings of "coercion;" correct?

1 A. Yes.

2 Q. And one of those understandings would require that  
3 the complainant be placed in reasonable fear of  
4 immediate or future harm?

5 A. Yes. But that's not what you asked.

6 Q. That's one of the definitions; correct?

7 A. Correct. But that's not what you asked in the  
8 letter.

9 Q. Another one of the definitions would be that --  
10 and then there was also a subissue with respect to  
11 coercion as to whether or not the fear has to be some  
12 sort of physical fear that the complainant would be  
13 placed in; correct?

14 A. There are some definitions that use that, yes.

15 Q. And there are others that say that, well, if they  
16 had some social fear, that that would be sufficient for  
17 coercion; correct?

18 A. Yes.

19 Q. And you don't address any of that with respect to  
20 the central issue of the case?

21 A. Correct.

22 Q. All that you say is, (Reading:) Implicit in any  
23 common understanding of consent is that it's freely and  
24 voluntarily given. Thus, consent obtained by coercion  
25 does not constitute consent.

1       A.    Correct. That was as far as I felt comfortable  
2       going without more specific definition.

3       Q.    Now, in connection with that request, in  
4       connection with Beau's objections, he had an objection  
5       on pages 26 and 27 of your report; correct?

6       A.    I'm sorry. Say that again.

7       Q.    Beau had an objection to certain character  
8       evidence being included in your report; correct?

9       A.    Certain evidence being included in the report,  
10      yes.

11      Q.    And that was evidence that was not specifically  
12      related to the interaction between Beau and Allie  
13      before, during or after the sexual encounter?

14      A.    He objected to the inclusion of any evidence  
15      related to Witness 9.

16      Q.    And other prior bad acts or character evidence for  
17      want of a better word; correct?

18      A.    Related to Witness 9.

19      Q.    Okay. Well, it was related to Witness 9, but it  
20      was information that you had obtained not just from  
21      Witness 9 but other witnesses that you interviewed;  
22      correct?

23      A.    Yes.

24      Q.    And it was involving Beau's interaction with  
25      Witness Number 9?

1 A. Correct.

2 Q. And the reason why Witness Number 9 may not like  
3 Beau?

4 A. Correct.

5 Q. And a lot of that was evidence that didn't place  
6 Beau in the best light; correct?

7 A. Yes.

8 Q. And one of it was that Beau had violated a  
9 no-contact order?

10 A. I think that's in there, yes.

11 Q. Okay. And so you had some -- and Beau objected to  
12 that?

13 A. Yes.

14 Q. And I believe it was your testimony the reason  
15 that you put it in there was because Beau was alleging  
16 a conspiracy?

17 A. Yes.

18 Q. Okay. And the conspiracy being that Allie and  
19 Witness 9 were out to get him?

20 A. Yes. And had, therefore, fabricated the  
21 allegations.

22 Q. And you had some discussions with Amanda regarding  
23 whether or not you should just tell Beau remove the,  
24 you know, remove the conspiracy claim; we'll take all  
25 this evidence out?

1 A. Yes.

2 Q. And in fact, you suggested that, that someone  
3 could reach out to Beau and suggest that to him?

4 A. Yes.

5 Q. Say if you want to take it out, we'll take it out  
6 but you've got to take out the conspiracy claim;  
7 correct?

8 A. Correct.

9 Q. And Amanda did not approve that; correct?

10 A. I don't recall what exactly -- I believe I said at  
11 the deposition I don't recall exactly what happened,  
12 but, yes, the ultimate result was that it obviously  
13 stayed in.

14 Q. And that wasn't a decision that you made. That  
15 was a decision that Amanda made; correct?

16 A. Yes. I think, yes.

17 MR. RATCLIFFE: Can I have a moment, your Honor?

18 THE COURT: Yes.

19 (Pause.)

20 MR. RATCLIFFE: No further questions.

21 THE COURT: Thank you.

22 All right. You may inquire, Mr. Richard.

23 MR. RICHARD: May I have a moment, your Honor,  
24 to organize my papers?

25 THE COURT: Yes.

CROSS-EXAMINATION BY MR. RICHARD

Q. Good afternoon, Ms. Perkins.

A. Good afternoon.

Q. We established through Mr. Ratcliffe's direct examination that you were hired by Brown in early November?

A. Yes.

Q. I'm showing you what has been marked as Exhibit 17. I think I may have the wrong exhibit.

Exhibit 17. Do you recognize this document?

A. Yes.

Q. What is it?

A. That appears to be the e-mail that I sent to Beau with the finalized report and exhibit.

Q. That's dated March 12th?

A. Correct.

Q. So you spent approximately four months on the investigation?

A. Yes.

Q. I'm not holding you to the precise amount, but approximately how many hours did you spent conducting the investigation?

A. I would say -- I would say at least -- I would say at least 80 to 100.

Q. As you conduct the investigation, what is the

1 process that you undertake to compile information?

2 A. So part of it is from documents that I received  
3 from the University, the original complaint, exhibits,  
4 any other University information I need. Sometimes  
5 it's getting a no-contact order, e-mails between  
6 administrators and students and staff to establish  
7 different facts.

8 I then interview students. The interviews of  
9 students are typically very long. You know, an  
10 interview with the principal parties typically last  
11 anywhere between two and four hours in the first  
12 interview, and I would say one and two for the second  
13 interview. Sometimes there's a third interview.  
14 Depending on -- you know, it's very important to me  
15 that both students get a chance to respond to things  
16 that the other has said so I go back and forth a little  
17 bit until I kind of narrowed those issues.

18 I speak to all the witnesses that I believe have  
19 relevant evidence, whether they are identified by the  
20 students themselves or that I learn of through  
21 interviewing other people or interviewing them. I  
22 typically interview at least one or two fresh complaint  
23 witnesses. I typically am trying to get information --

24 Q. What is a fresh complaint witness?

25 A. Fresh complaint witness is someone who has

1 received information about a complaint of sexual  
2 misconduct from the complainant within a relatively  
3 short period of time after the event or at least the  
4 first person who was told that sexual misconduct had  
5 occurred.

6 But I also look for admissions potentially made  
7 by the respondent student. I try to get the history of  
8 the whole relationship between them leading up to the  
9 event, if there is one. Sometimes if there's a party,  
10 and this was not that case, but I'll interview lots of  
11 people at the party.

12 Q. Let me ask you this. Focus on Exhibit 19, which  
13 is the final report. You've identified the parties and  
14 the dates on which you interviewed each of them?

15 A. Yes.

16 Q. Is there a reason why you interviewed the  
17 complainant three times and the respondent twice?

18 A. Yes. I believe that the respondent in his second  
19 interview -- not in the second interview. I believe  
20 that the respondent just as the investigation was  
21 concluding identified two new witnesses, one of whom  
22 was the roommate of the complainant, and one of whom  
23 was a fraternity brother of his who had allegedly  
24 overheard a conversation between Witness 9 and the  
25 complainant shortly before the complaint was filed.

1           Because of that, I did feel that those people  
2        were important to interview, and I did. When I had the  
3        information that I received from them, I felt it was  
4        only fair to the complainant to come back to her and  
5        question her about what those two witnesses provided.

6        Q.    Witness 1, who was that?

7        A.    I believe that Witness 1 is -- was the roommate of  
8        the complainant at the time of the event.

9        Q.    The interview occurred on February 12th?

10      A.    Of her, yes.

11      Q.    Is that the interview that occurred after your  
12        session with Beau?

13      A.    I believe so, yes.

14      Q.    When a student identifies a potential witness, do  
15        you always interview the witness or do you decide  
16        whether or not to do so?

17      A.    No. I definitely decide whether or not to do so.

18      Q.    Were there any witnesses in this case that were  
19        identified that you did not interview?

20      A.    There were few. Some who just did not respond to  
21        requests for interviews. Or -- I can't recall in this  
22        case if there was somebody who refused to participate.  
23        There may have been one or two. If so, I always put  
24        that in the report.

25      Q.    Let me just take a step back. How many

1       investigations have you conducted for a university?

2       A.    I would say about 40.

3       Q.    What's the timeframe of those investigations?

4       During what period of time have you conducted those  
5       investigations?

6       A.    You mean beginning in -- I would say beginning I  
7       think in the summer of 2011, around then to the  
8       present.

9       Q.    Are there differences between the models that  
10      universities use?

11      A.    Yes, there are some. Some want me to just do  
12      interviews and investigate, report back kind of in a  
13      linear fashion, report what each witness said. There  
14      are some institutions that want me to analyze whether  
15      or not the facts violate their policies. Then there  
16      are some who want me to sort of take it one step  
17      further and ask for sanction recommendations.

18           There are also differences in the way the models  
19      work. Some are the single-investigator model with no  
20      hearing, in other words, where the panel does not see  
21      the students. There are some models where the panel  
22      sees the students and then makes the ultimate  
23      determination. There are some models where panels ask  
24      me questions; some where they don't.

25      Q.    In your final report, Footnote 1, which is on the

1 screen, why did you insert that footnote?

2 A. Okay. Because the complainant felt -- the  
3 complainant had included material in her complaint  
4 related to other students, including Witness 9 and  
5 another student and -- oh, I'm sorry and also Witness  
6 8. Witness 8, 9 and 10. And I felt that these -- that  
7 the substance of the incidents that had happened with  
8 those witnesses were not sufficiently related to what  
9 had happened in the complainant's case to include them,  
10 but I wanted it to be clear that that was the reason.  
11 It wasn't that I didn't consider them. It was that I  
12 considered them and thought that whatever they would  
13 provide would be more prejudicial than probative.

14 THE COURT: Could I ask you just to slow way  
15 down.

16 THE WITNESS: Sorry. Just off the record for a  
17 minute.

18 (Discussion off the record.)

19 Q. In the report, pages one through two --

20 A. Should I repeat the previous answer about Footnote  
21 1?

22 THE COURT: No. It's in the record and I have  
23 it.

24 Q. Witness Number 8 provides an explanation of the  
25 testimony. Why did you use that?

1       A.    Because I felt that it was important to explain  
2       why that information was not being included.

3       Q.    Is it the same for Witnesses 9 and 10?

4       A.    Yes.

5       Q.    And this relates to Footnote 1?

6       A.    Yes.

7       Q.    Would you identify the information listed under  
8       "Information"?

9       A.    Yes. So these are basically a list of the  
10      exhibits that I included with the report. They are not  
11      a complete list of everything I reviewed or received,  
12      but it's what I felt was sort of the important things  
13      to include.

14      Q.    And what is the difference between Appendix C and  
15      D?

16      A.    Appendix C was the text messages between the  
17      complainant and the respondent submitted by the  
18      complainant; and Appendix D was the same text messages  
19      but the versions submitted by the respondent.

20      Q.    Page three is a footnote explaining those text  
21      messages. Can you describe for the Court the reasoning  
22      for that footnote?

23      A.    Yes. So I did think it was important to include  
24      both exhibits, both versions of the text messages  
25      submitted by each of the students because they were

1       different. Beau's was complete and appeared to be  
2       complete while the rest of the complainant's version of  
3       the text messages was not complete. I did ask the  
4       complainant about the texts prior to the event, prior  
5       to the incident, why she had not included those and so  
6       I felt that it was important to include that  
7       explanation and that the panel could accept or reject  
8       the explanation or draw an inference that there was  
9       some motive on her part to cloud their view of the  
10      truth.

11      Q.     And Appendix E are photos?

12      A.     Yes.

13      Q.     You took them?

14      A.     Yes.

15      Q.     Why were they included?

16      A.     Because I typically go to the site, to the site of  
17       any incident to see if any information might be helpful  
18       from physically looking at it.

19            In this case, the locker room was small and it  
20       showed whether or not -- there was some question  
21       between the two of them about whether or not there was  
22       a power outlet in the room so I wanted to see whether  
23       or not there was. I also wanted to look at the light  
24       switch and look at the room in terms of whether or not  
25       there was a reasonable opportunity for the complainant

1 to leave if she chose. But also it just kind of gave  
2 context for the way both parties described the event.

3 Q. And Appendix F, as in Frank, why did you include  
4 those items?

5 A. Appendix F was an excerpt of text messages between  
6 the respondent and Witness 8 that were submitted by  
7 Witness 8. I only took an excerpt of the larger set of  
8 text messages that Witness 9 -- I'm sorry, Witness 8  
9 gave me. And it was just because the rest was not  
10 particularly relevant but what was included was.

11 Q. Why did you deem what was included to be relevant?

12 A. Okay. Because these text messages were a  
13 conversation about -- in which the complainant had  
14 agreed to put in a good word for the respondent when he  
15 was pursuing another woman. So it was to corroborate  
16 that. And also to corroborate the claim that the  
17 complainant had signed the respondent for dating  
18 websites in early December 2014. So both of those to  
19 some extent corroborated the respondent's claims that  
20 she was conspiring against him.

21 Q. What is included in Appendix G?

22 A. Appendix G was the excerpt of text messages  
23 between respondent and Witness 9. They were, again, an  
24 excerpt only because there was a lot of other material  
25 in the complete set of the text messages that I had

1 received from Witness 9 that I felt were more  
2 prejudicial than probative. The ones I included, I  
3 believe, were -- statements made were included because  
4 they contained statements of the respondent with  
5 respect to his state of mind on the night of November  
6 9th -- 10th, sorry.

7 Q. When you're conducting your investigations, how is  
8 it that you request information?

9 A. So I will ask them if they I will -- I always ask  
10 them for text messages with the other parties. I will  
11 also ask them for Facebook messages, any Snapchat  
12 recordings they might have made, any kind of social  
13 media contact because often they're a contemporaneous  
14 record of what was going on at the time and they are  
15 tremendously helpful in creating a timeline of events.  
16 But I cannot require them. I have no subpoena power so  
17 the students can say no or they can certainly say, "I  
18 don't have them." And that may or may not be true.  
19 They could -- they also -- they might give them. If I  
20 ask for something and they just won't give it to me,  
21 even though they say they have it, I will include that  
22 fact in the report. If they say that they don't have  
23 it, I typically include that fact in the report as  
24 well.

25 Q. The report lists information provided but not

1       considered in your rationale?

2       A.    Yes.

3       Q.    I'd like to just go through each of these. Would  
4       you identify what information was provided under number  
5       one?

6       A.    It appears that I received text messages between  
7       the respondent and Witness 10 submitted by Witness 10.  
8       I think that these may have been primarily related --  
9       there was some contact between the respondent and  
10      Witness 10 but it was pretty minimal, and it related  
11      to -- I wanted to say it related to drug use or  
12      something, which was clearly not relevant to what we  
13      were talking about, and the contact between them was  
14      not significant enough one way or the other to make  
15      them germane to any real issue here.

16      Q.    Why didn't you include the information listed in  
17      item two?

18      A.    Because these were messages between Witness 9 and  
19      the respondent, the bulk of which contained pretty  
20      prejudicial material because essentially the facts were  
21      that he had been sexually harassing Witness 9. And  
22      other than the limited content that I included in the  
23      report, which was only important to show the state of  
24      mind of the complainant and Witness 9 in filing the  
25      complainant's complaint, other than that the rest of

1       the sexually harassing conduct that was in these text  
2       messages was more prejudicial than probative.

3       Q.     And item three, why was that information excluded?

4       A.     Mostly -- this was an e-mail written by the  
5       respondent to mock trial members about -- in the summer  
6       of 2015 and his statements of interest in becoming an  
7       E-Board member in the spring and summer of 2015 because  
8       they were really -- they were made so long after the  
9       fact that they weren't going to really prove or  
10      disprove any material fact. They were essentially  
11      apologies for his behavior, which didn't really help  
12      determine one way or the other. They were vague. They  
13      didn't specifically refer to any event so I did not  
14      include those.

15      Q.     The last item, why was that excluded?

16      A.     The Facebook post provided by Witness 9 was a  
17      photo that she had posted of a friend from high school.  
18      She had told me that after this event she had received  
19      almost immediate contact from the respondent saying,  
20      "Is that your boyfriend?" So that may be important in  
21      a different case, but it was not relevant in the case  
22      involving Allie. There was no allegation that Allie  
23      ever knew about this Facebook post.

24      Q.     And your meetings with Beau first went on November  
25      19, 2015, where did that occur?

1       A. At Brown.

2       Q. How long did it last?

3       A. I don't specifically recall, but I want to say  
4       probably roughly three hours.

5       Q. Was he accompanied by anyone?

6       A. He was. He was accompanied by Mr. Ratcliffe.

7       Q. Were there specific topics that you -- going into  
8       that meeting, what were the issues that you wished to  
9       address?

10      A. You know, my first concern -- in every interview  
11      with students, I want to create an atmosphere where  
12      they feel comfortable about what happened to them. I  
13      basically let them tell me whatever they want to tell  
14      me and then it's up to me to sort out what should be  
15      considered or not considered. But I feel like it's  
16      very important for the person speaking to be able to  
17      feel like they got everything off their chest that they  
18      needed to.

19           I then go back and ask more specific questions  
20      that relate to, so in Beau's case, more specifically  
21      what was in the complaint and get him to give responses  
22      to each of those things. Then at the end, I'd go  
23      over -- I would also go over text messages so there was  
24      hundreds of pages of text messages between them.

25      Sometimes I'm going through the text messages to ask

1 for context of particular conversations, e-mails  
2 between them.

3 I believe we also talked about mock trial. I  
4 was trying to figure out how much that was important or  
5 not in the whole scheme of things because there was a  
6 lot of questions about the mock trial process and how  
7 it works and things like that.

8 Then at the end, we talk about -- we talk about  
9 any other witnesses he thinks I should talk to, any  
10 other documents he thinks should be provided.

11 Q. Did he identify witnesses for you?

12 A. He did. I can't recall if those were -- those  
13 might have been in his response already. It's not --  
14 if I didn't receive them in a formal, you know, e-mail  
15 or something, he may have told me some names. He  
16 definitely named the last two witnesses that I  
17 interviewed.

18 Q. Those were who?

19 A. That was the complainant's roommate and his  
20 fraternity brother who had overheard a conversation in  
21 the dining hall between the complainant and Witness 9.

22 Q. That roommate that you mentioned, that being  
23 Witness 1?

24 A. Yes.

25 Q. Identified on page 16?

1 A. Yes.

2 Q. When did you interview Witness 1?

3 A. I want to say February? I think maybe before it  
4 came up that I interviewed her on February 12th.

5 Q. Did you know of this witness prior to that time?

6 A. No. I believe that the complainant had told me  
7 that when she got home from Faunce Hall that night,  
8 when she got to her room, her roommate was asleep. So  
9 no, I had not -- and she said that she had not spoken  
10 at length to her roommate. She hadn't really told her  
11 roommate about it.

12 Q. Just for clarification, the report states  
13 Witness 1 --

14 A. I'm sorry. Friend of. Friend of the roommate.  
15 Sorry.

16 Q. And when you interviewed Witness 1, what  
17 particularly were you seeking to inquire about?

18 A. To find out what statements of the complaint --  
19 if, in fact, the respondent was correct that there had  
20 been some conversation immediately after the event had  
21 occurred, I wanted to know what that conversation would  
22 have been. So I was looking for statements from the  
23 complainant about the event.

24 Q. Witness 11 was interviewed?

25 A. That's the dining hall witness? Yes.

1                   Witness 11, it looks like I interviewed him on  
2 February 12th by phone.

3           Q.    Were both these individuals identified by Beau  
4 during your February 2 meeting?

5           A.    Yes.

6           Q.    Pages 28 and 29. Is this the summary of your  
7 interaction with Witness 11?

8           A.    Yes.

9           Q.    And what --

10          A.    It is a summary. It is not the total of  
11 everything that Witness 11 told me.

12          Q.    What was the total of what Witness 11 told you?

13          A.    So in addition to the summary that's contained  
14 here, Witness 11 had told me that he -- he asked me if  
15 I was going to -- he told me that the reason he hadn't  
16 initially responded to requests to interview him was  
17 because he was afraid of retaliation from the  
18 respondent. He said that he knew of two other women, I  
19 believe it was two other women who had unpleasant  
20 experiences with the respondent but didn't want the  
21 respondent to know that he knew about them. And at the  
22 same time he said, "But I did hear of this conversation  
23 in the Ratty," which is the dining hall, one of the  
24 dining halls, "and this is what -- what I'm telling you  
25 is true."

1                   I'm sorry. He also talked about an incident  
2                   that occurred shortly before the interview in which the  
3                   respondent had been very out of control at a social  
4                   function that he and a group of fraternity brother were  
5                   at to the point -- sorry. An incident shortly before  
6                   the interview that the respondent had become very out  
7                   of control at a social event that the witness and other  
8                   fraternity brothers had attended at a local bowling  
9                   alley, I think, to the point where the fraternity  
10                  brothers had to try to get him under control.

11                  Q. At some point, you started to write the report?

12                  A. Yes.

13                  Q. When do you make the determination to put pen to  
14                  paper?

15                  A. Not until -- really not until the last witness's  
16                  interview is complete because I don't want to make any  
17                  prejudgments until I really have a chance to look at  
18                  all the evidence, compare stories, compare versions of  
19                  events, look at all the documents, see if the dates  
20                  match, you know, are consistent with what people are  
21                  saying and the substance of the documents is consistent  
22                  with what people say. So I really don't like to start  
23                  until after the last interview.

24                  Q. How do you determine when your investigation is  
25                  complete?

1       A.    Good question. When the evidence starts to become  
2       duplicative and I'm not learning anything new that  
3       would help convince anyone one way or the other about  
4       the material issues in the case.

5               And to a certain extent, sometimes I also  
6       interview people who I doubt will have any relevant  
7       information but the student is so adamant and it is so  
8       important to the student that I interview that witness  
9       that I do, and then I will simply include -- if I don't  
10      include information from that witness, I'll include an  
11      explanation about why in the report.

12      Q.    When you finalize the report you prepare for the  
13      student, do you receive feedback?

14      A.    Yes.

15      Q.    How do you determine how to weigh that feedback?

16      A.    Sometimes if it's a factual thing where the  
17      student says you said I said X, Y, Z, I really said A,  
18      B, C, I will go back to my notes and see if I have a  
19      definitive version and/or a clear memory that they in  
20      fact said what I said they said. If there's some  
21      question like there's nothing specific in my notes, I  
22      will probably change it to what the student is now  
23      saying. Of course, I'm human. I sometimes can mishear  
24      what people say and sometimes miswrite what people say,  
25      but I do try to be very accurate. I take notes during

1 my interviews that are not as good as a stenographer's  
2 but they're pretty good. And I try to get down exact  
3 quotes as best I can on the important issues.

4 Q. In this case, did you receive feedback from both  
5 students?

6 A. Yes.

7 Q. And what particularly do you recall as far as your  
8 assessment of Allie's feedback?

9 A. I do recall a couple of the main issues. I think  
10 there may have been some typos that, of course, I was  
11 going to correct. I remember one issue being about the  
12 explanation of why she had deleted her text messages.  
13 There was something about the explanation had to do  
14 with whether she was on birth control or not and she  
15 didn't want that in the report.

16 Another issue was about the events that  
17 triggered the conversation in the dining hall. She  
18 thought that I had gotten that wrong in terms of what  
19 she had said and I agreed with her. I did change that.

20 She wanted me to include the information from  
21 Witnesses 8, 9 and 10 that we talked about earlier that  
22 had to do with other students having sort of, for lack  
23 of a better term, sexually harassing experiences with  
24 Beau, and I did not include those.

25 Q. What do you recall about the assessment of those

1 comments that Attorney Ratcliffe showed you?

2 A. Well, of course, now that we've testified a lot  
3 about the coercion footnote that's what's most  
4 prominent in my mind. There were other changes that he  
5 requested that I made.

6 Q. What about the character evidence?

7 A. Oh, the character evidence. Right. This is  
8 discussion of Witness 9. Beau had raised the issue of  
9 conspiracy from the outset in which he said that the  
10 complainant and Witness 9 were conspiring against him  
11 and, you know, therefore, Allie was fabricating the  
12 allegations of the complaint. So it was only fair to  
13 allow Allie to provide an explanation of what had  
14 really gone on. I also had interviewed Witness 9 and  
15 said -- and had gotten her version of events and some  
16 of the other witnesses had also mentioned some of these  
17 events so those had come out as well.

18 So Beau then was upset that the explanation was  
19 included in the report but he, along with very able  
20 counsel, Mr. Ratcliffe, chose to make that part of his  
21 defense.

22 I did run down as best I could what he thought  
23 the conspiracy could have been based on, and he said it  
24 was this conversation in the dining hall that made him  
25 think there was a conspiracy. So that was partly why I

1       interviewed that witness. And because of the -- oh, I  
2       think there was another -- he thought that because of  
3       some negative impact that he experienced on mock trial,  
4       he thought that that was also evidence of the  
5       conspiracy. So -- it was only fair to include what her  
6       response was. Because if, in fact, everything she said  
7       was true, there would be an alternate explanation of  
8       why she would be mad at him or upset with him or want  
9       to bring a complaint against him; ergo, he committed  
10      these acts toward her that were not consensual.

11           So I felt it was important to look at those, but  
12       I didn't find any evidence of that. So getting back to  
13       his responses to the report, there was really nothing  
14       to change there.

15       Q. How do you ensure that your report will be  
16       balanced?

17       A. I try really hard. You know, one of my favorite  
18       quotes is a quote from John Adams, and I talk about  
19       this when I do training for colleges, about how every  
20       person is entitled to as much impartiality as the lack  
21       of humanity will allow.

22           The reason I love that quote is because it says  
23       right in there that no human being is perfectly  
24       impartial. It's impossible. But because of that,  
25       because I'm very aware of that, I constantly am trying

1 to question which way I'm thinking in terms of, as  
2 people like to say, checking my bias at the door.

3 I really do try in every interview with students  
4 to really understand what their point of view was and  
5 what their state of mind and their rationale and ways  
6 of thinking. In the moment that I am with them in the  
7 interview room, I am with them. I feel like that's my  
8 role and that that helps me to remain fair and  
9 impartial because it allows me to get all the  
10 information and then weigh it at the end.

11 Q. How do you distinguish between what falls within  
12 your role and the panel's role?

13 A. Primarily, that's what's in the policy. You know,  
14 whatever the institution's policy is. In this case, I  
15 was primarily to be a fact-finder but also it was -- I  
16 was told that it was appropriate for me to analyze  
17 evidence to some extent. It can be -- I think that  
18 often panelists are very nervous. Of course they're  
19 not lawyers and they're just regular people, and so I  
20 feel like it's important to highlight for them in some  
21 ways what is relevant or not, whether it's an admission  
22 or inconsistent statement or the importance of  
23 corroboration, things like that.

24 MR. RICHARD: May I have a moment, your Honor?

25 THE COURT: Yes.

1 (Pause.)

2 MR. RICHARD: Nothing further, your Honor.

3 THE COURT: Okay. Thank you.

4 Mr. Ratcliffe, redirect?

5 MR. RATCLIFFE: No redirect.

6 THE COURT: Okay. Thank you. All right. I  
7 have a few questions and then we'll get you out of  
8 here.

9 So there was one question I meant to ask  
10 Ms. Walsh and I forgot to, but I think you're in just  
11 as good a position to answer it. I think I know the  
12 answer to it. It has to do with the burden of proof  
13 and the preponderance of the evidence standard. It's  
14 my understanding that that's driven by the  
15 recommendation of the OCR; correct?

16 THE WITNESS: Yes.

17 THE COURT: Do you know of any schools that  
18 don't use a preponderance of the evidence standard?

19 THE WITNESS: Not anymore. I think that they  
20 would be probably the subject of an audit by OCR if  
21 that were the case. Certainly the trends -- I haven't  
22 worked with any school that is using anything other  
23 than that. If I did, I would be telling them to look  
24 at their policies again because it would make me  
25 uncomfortable that they were going to face something

1 that they wouldn't want to face.

2 THE COURT: Okay. I want to ask you some  
3 questions about both your report and the questions that  
4 were posed to you by the panel.

5 So I believe you stated that in your report your  
6 goal was to not make any credibility findings between  
7 the versions offered by Allie and Beau; is that correct  
8 or not?

9 THE WITNESS: No. It wasn't that it was my goal  
10 not to. It's just that I didn't.

11 THE COURT: All right. Well, did you do it  
12 accidentally?

13 THE WITNESS: In some ways. Probably had I had  
14 more time to sit and really think about particular  
15 statements and whether I thought those were credible, I  
16 would have, but I simply did not have the time. It was  
17 very important that we get the report done at that  
18 point, and it wasn't critical that I make those  
19 determinations at least as between the principals  
20 because they were going to be seen by the panel.

21 THE COURT: Okay. So let me make sure I have  
22 this straight. So it's your view that the report that  
23 you drafted did not make credibility findings, right?

24 THE WITNESS: Not in so many words, no.

25 THE COURT: It's not right?

1                   THE WITNESS: Right.

2                   THE COURT: So you believe the report does make  
3                   credibility findings?

4                   THE WITNESS: No. There's nothing in the  
5                   report, there's no section that says credibility  
6                   findings and itemizing them one by one. There's  
7                   certainly facts within, embedded within the report from  
8                   which a panelist could have said, Okay, based on this,  
9                   the statement is therefore not credible. But that  
10                  sentence is not in there.

11                  THE COURT: Right. I'm not asking you what a  
12                  panelist could conclude. I'm just asking you whether  
13                  you drew any conclusions about credibility and  
14                  expressed them in your report.

15                  THE WITNESS: I did not express any conclusions  
16                  about credibility specifically in the report.

17                  THE COURT: But now what I think I'm hearing you  
18                  say is that it may be that some of your thoughts about  
19                  credibility could be inferred from what you wrote in  
20                  the report; is that fair?

21                  THE WITNESS: Yes.

22                  THE COURT: Okay. And to the extent that some  
23                  of those thoughts, your views about credibility are  
24                  reasonably inferred from your report, is it fair to say  
25                  that they're consistent with what you said to the panel

1       when you were with them and they were asking you  
2       questions?

3           THE WITNESS: In general, yes. But just now in  
4       rereading the notes about what happened at the panel,  
5       there was -- the statement -- and actually, I think I  
6       told them -- or I said to them later.

7           So there was one statement that I made to the  
8       panel that was not specifically included in the report  
9       that could be seen as a credibility determination and  
10       that was the statement about whether or not she was an  
11       enthusiastic participant, which is what his claim was.  
12       As I was preparing for the hearing, I was rereading the  
13       report and the text messages between them and suddenly  
14       saw this sort of pattern in the text messages of where  
15       he would consistently return the conversation, resolve  
16       the issue of, Oh, we're just going to be friends. If  
17       we see this movie tonight, it's going to be platonic.  
18       And then he would switch back around and say, Well,  
19       but, you know, I'm interested in you or I might make  
20       you get hot, then we'll do something. Things like  
21       that.

22           So I suddenly saw that pattern which I hadn't  
23       really noticed particularly before. And then I thought  
24       about it in relation to what was going on and how each  
25       of them talked about what happened in the room that

1       night. And so in thinking about that, her version of  
2       events was somewhat more what happened in the room that  
3       night where she was resistant but ultimately caved, for  
4       lack of a better word, was more consistent with the  
5       text message pattern than it was with his version of  
6       events, which was that she was suddenly very  
7       enthusiastic and, you know, eager to be involved.

8               Had I spent more time with the report, I  
9       probably would have included in the report a  
10       credibility finding that that particular statement that  
11       he made was not credible in light of those other text  
12       messages and the quality of both of their statements  
13       about what happened that night. Other than that, I  
14       felt that they were both generally believable.

15               THE COURT: Okay. So that brings me to the  
16       statement that's in Ms. Walsh's notes. You've reviewed  
17       that?

18               THE WITNESS: Yes.

19               THE COURT: We can put it back up on the -- in  
20       fact, let's do that.

21               What exhibit is this?

22               MR. RICHARD: Is this the red-line?

23               THE COURT: No. This is the notes.

24               MR. RICHARD: Exhibit 24.

25               THE COURT: Twenty-four?

1 MR. RICHARD: Yes.

2 THE COURT: Can you just put that up.

3 MR. RICHARD: Is there a page number?

4 THE COURT: Well, looks like page two, I think.

5 So first of all, let me just get clear. The  
6 paragraph there where you're responding to Gretchen  
7 Schultz's question, "Doesn't someone have to be lying?  
8 She says she said no, and he says she's an enthusiastic  
9 partner" --

10 THE WITNESS: Um-hum. (Affirmative.)

11 THE COURT: -- the notes describing your  
12 response, do you -- I don't think you were asked this  
13 question. I just want to be clear.

14 Do you feel that those notes are an accurate  
15 representation of your response? They're almost like a  
16 transcript so I just want to make sure you feel that  
17 Amanda Walsh took a complete version of what you had to  
18 say.

19 THE WITNESS: Yes. It's generally accurate.

20 Yes.

21 THE COURT: There's nothing more that you said  
22 that she didn't get down or anything.

23 THE WITNESS: No.

24 THE COURT: All right. So in that statement  
25 that you've made there is consistent with the statement

1       you just said, if you had had more time, you would have  
2       basically put that into your report I think is what you  
3       just said, right?

4               THE WITNESS: Yes.

5               THE COURT: But you didn't have a chance to put  
6       it in your report, but you did convey it to the panel  
7       in this answer?

8               THE WITNESS: Yes.

9               THE COURT: Okay. So I think you were a little  
10       equivocal about this when Mr. Ratcliffe was asking you  
11       questions. But the statement that you make, the idea  
12       that she was willingly jumping into this sexual  
13       encounter doesn't match -- I should back up.

14               First, you say if you look at the text messages,  
15       it does show that he is persistently making things  
16       sexual even though she is a willing participant at  
17       times. He does convert things into something sexual.  
18       He did say he asked for consent and she was  
19       enthusiastic, but that isn't consistent with the text  
20       messages where you can see her hesitation. The idea  
21       that she was willingly jumping into the sexual  
22       encounter doesn't match, but that's for the panel to  
23       decide.

24               Now, you would agree, wouldn't you, that you're  
25       making a credibility determination there in response to

1       Gretchen Schultz's question that somebody is telling  
2       the truth and somebody is lying. Would you agree that  
3       you're telling the panel that you believe Allie and you  
4       don't believe Beau?

5               THE WITNESS: Yes.

6               THE COURT: All right. And that should include  
7       the next statement, Her version appears to be more  
8       consistent with the pattern that's in the text  
9       messages, right?

10              THE WITNESS: Yes.

11              THE COURT: So then you say, Her actions after  
12       the incident are difficult to reconcile, right?

13              THE WITNESS: Correct.

14              THE COURT: So that is a reference to this  
15       abundance of text messages between them that is both  
16       sexual and happy or ebullient, right? Is that what  
17       that's a reference to?

18              THE WITNESS: Her actions after the incident.

19              THE COURT: As well as what she is telling her  
20       roommates and the other things that you gathered from  
21       the witnesses, right?

22              THE WITNESS: Yes. Yes.

23              THE COURT: All right. So then you say that's  
24       difficult to reconcile. I just want to be sure I'm  
25       understanding what you're saying here.

1                   So you're saying that's difficult to reconcile  
2 with the conclusion that you just told them, which is  
3 that her version is more credible than his version,  
4 right?

5                   THE WITNESS: Yes.

6                   THE COURT: Okay. Is that what you're saying?

7                   THE WITNESS: Yes.

8                   THE COURT: Okay.

9                   THE WITNESS: Or difficult to reconcile with the  
10 idea that what happened that night was not consensual.

11                  THE COURT: Exactly.

12                  THE WITNESS: Right.

13                  THE COURT: Then the next sentence is,  
14 Specifically, there is a possibility that she would not  
15 have done anything about it or filed a complaint if a  
16 relationship had come from it. She may say she would  
17 have forgiven him or thought about the incident in a  
18 different way.

19                  So in that statement, you seem to be -- you  
20 don't have to agree with me. If I'm misconstruing  
21 this, you just tell me. You seem to be characterizing  
22 her actions after the incident as not reflective of  
23 whether it was consensual or not, but rather reflective  
24 of her state of mind about the possibility of a  
25 relationship.

1                   In other words, you seem to be providing the  
2 panel with a way to reconcile those post-event actions  
3 and text messages with that last sentence.

4                   THE WITNESS: That was not my intent. I was  
5 just trying to lay out all the facts before them. I  
6 think the point that Mr. Ratcliffe was trying to get  
7 out is if you were a victim of sexual assault why would  
8 you --

9                   THE COURT: Okay. So let me ask you another  
10 question. If that wasn't your intent to give the panel  
11 a way to reconcile the statements, then why wouldn't  
12 you have said effectively, Her actions after the  
13 incident are difficult to reconcile. They may indicate  
14 that the event was consensual, or they may indicate  
15 that Allie is not telling the truth, or they may  
16 indicate that Beau's version is more likely correct  
17 than Allie's version, or something like that. That's  
18 what I'm trying to figure out. If it was your view  
19 that the post-event actions cast doubt on her  
20 credibility, you didn't say that to the panel. You  
21 characterized them as explainable by this possibility  
22 of an ongoing relationship.

23                   THE WITNESS: When I said they're difficult to  
24 reconcile, I thought that that is what I was saying was  
25 that on the other hand there's other evidence that

1       could be considered exculpatory including the  
2       possibility that she wouldn't have done without all  
3       that --

4               THE COURT: That's what I'm trying to get to.  
5       So what you meant was what you just said, which is her  
6       version appears to be more credible and consistent with  
7       the pre-encounter text banter --

8               THE WITNESS: Right.

9               THE COURT: -- but her post-encounter actions  
10      cast doubt on that. You're saying now that's what you  
11      meant to convey?

12              THE WITNESS: Yes. And I thought I did convey  
13      that.

14              THE COURT: In light of my questions to you, do  
15      you think you actually conveyed that?

16              THE WITNESS: You know, I do. I mean, as I read  
17      it, yes. It's not like I get the questions ahead of  
18      time and I get to write out well-crafted and thoughtful  
19      responses.

20              THE COURT: Well, this is a pretty obvious  
21      question. You must have known you were going to get  
22      this question, Who's telling the truth, him or her.  
23      This isn't a mystery.

24              THE WITNESS: Right, but I think that my  
25      answer -- I think that I was trying in my answer to be

1 even-handed to say it's possible that something else  
2 could have happened completely irrespective of what the  
3 pattern of text messages had been that night. It could  
4 have been totally unrelated because look at these  
5 potentially exculpatory facts that this took place  
6 afterwards. Or you could say it's consistent -- they  
7 could conclude it's consistent with the pattern and  
8 there's an explanation for the post-incident behavior.

9                   In any event, it appears from reading this  
10 pretrial memo, because I didn't know anything about the  
11 deliberative process until I was called to testify, it  
12 appears that the panel drew their conclusions based on  
13 a completely different thing.

14                   THE COURT: None of that is evidence until they  
15 testify. So they haven't testified so there's no  
16 evidence on what they based their conclusion on.  
17 Counsel have made representations what they think it  
18 will be, but we'll hear from the panel members. But I  
19 think I've got what you feel about the answer.

20                   I want to come back --

21                   THE WITNESS: I'm sorry. In the room there's  
22 also body language from the panelists. There's verbal  
23 conversation and non-verbal conversation. So I read  
24 them to be understanding what I was saying in the way  
25 that I meant it as best anyone can. I didn't sense any

1       confusion on their part about what I meant. They  
2       didn't ask any follow-up questions. They didn't say,  
3       What are you trying to say about that.

4               THE COURT: You've got to explain that to me.  
5       What body language did they use to convey to you that  
6       they understood what you meant by that was that they  
7       could take her post-encounter activities as undermining  
8       her credibility and making his credibility or his story  
9       more credible? Explain to me exactly what body  
10      language they were conveying that with.

11              THE WITNESS: I believe they just nodded and did  
12       not look confused. Also at the end, someone made a  
13       comment about -- someone made a comment saying thank  
14       you so much, it was a lot of work. And I said  
15       something like, Good luck. This is a difficult one.  
16       Or something like that. Or complicated, something like  
17       that.

18              THE COURT: So I want to go to your report.  
19       That's Exhibit 18. Do you have a copy of your report  
20       in front of you?

21              THE WITNESS: No.

22              THE COURT: Might be easier if we just gave you  
23       a copy of your report. Could one of you just do that,  
24       please.

25              MR. RICHARD: Excuse me, your Honor. Final

1 report?

2 THE COURT: Yes.

3 Now, I'm not going to belabor a lot of this  
4 because Mr. Ratcliffe asked you a number of questions  
5 about it, but I do want to come back to this business  
6 about not collecting the full body of text messages  
7 between the complainant and Witness Number 9 and that's  
8 discussed in Footnote 26.

9 And you were asked a lot of questions about  
10 that. But you say in that footnote, As explained in  
11 greater detail later -- and I believe that is a  
12 reference to the second to the last paragraph of the  
13 report so if you could turn to page 29, I think what  
14 you're referring to there is how you have assessed  
15 things with respect to those text messages and the  
16 claim that there was a conspiracy between the  
17 complainant and Witness Number 9 to get him.

18 THE WITNESS: Yes.

19 THE COURT: So what you say here is that you  
20 tell the panel -- back up. You start by saying, By the  
21 respondent's own admission, he treated the complainant  
22 poorly.

23 And there's one or two other places where you  
24 note that in the report. And I'm just wondering -- and  
25 then you say, Regardless of whether their sexual

1 activity was consensual or not.

2                   What does whether he treated her poorly have to  
3 do with it?

4                   THE WITNESS: Because it went to an explanation  
5 for why she would have disliked him. Because even if  
6 the sexual activity was consensual, and his defense  
7 was, and this was raised clearly in his response, that  
8 I'm a jerk but I didn't commit sexual misconduct, so  
9 either way, whether the activity was consensual or not,  
10 there was a reasonable explanation for her to be angry  
11 with him.

12                  THE COURT: All right. So then you go on to say  
13 that, Her dislike of him is reasonable even if he  
14 didn't assault her, et cetera. And that the  
15 complainant and Witness 9's negative feelings toward  
16 the respondent do not assist the panel in evaluating  
17 whether the complainant's claims are fabricated,  
18 neither does the conversation overheard by Witness 11  
19 because there's no evidence that their reasons for  
20 "wanting to get him" were unfounded or that they wanted  
21 to take any action other than that to which they were  
22 entitled.

23                  Now, I'm wondering how it is that you have  
24 reached here the conclusion that looking at the full  
25 body of text messages could not be informative before

1 you see them.

2 THE WITNESS: Because there were already -- the  
3 text messages that we did have, that I did have, were  
4 already so clearly demonstrative of precisely the  
5 information that the respondent wanted to convey, which  
6 was that they couldn't stand him and that they, you  
7 know, didn't like him and wanted to take action against  
8 him. And specifically, one of those first text  
9 messages, which is in December, is clearly where she  
10 discloses for the first time to Witness 9 that this  
11 event had occurred, and it's Witness 9 who said, OMG,  
12 that's sexual assault.

13 So once they're kind of in that mode, you'd  
14 think that on his best day what he'd be looking for is  
15 a statement like, Oh, actually, it was super fun; I had  
16 a really great time.

17 But once she has locked herself into that  
18 version of events with her friends, very unlikely that  
19 there's going to be some piece of evidence later on,  
20 some text message that said, yes, it's true, I really  
21 had a super fun time and we're just going to keep going  
22 on this because he's a jerk. That fact was also  
23 corroborated or that inference was also corroborated by  
24 the behavior of the complainant with respect to the  
25 outside world, that is the mock trial team, how she

1 talked about it, presented it.

2 So there just seemed to be a very small  
3 likelihood that that would be the case.

4 Plus, because these two were so close, it was  
5 likely that it was going to really be that there would  
6 be many, many messages and that it would really bog  
7 down the investigation. And these are, unlike in a  
8 civil case, where of course you'd get access to that  
9 because maybe there'd be some nugget that would either  
10 lead you to that conclusion or some other relevant  
11 conclusion, these cases are supposed to be completed  
12 within 60 days.

13 There had already been significant delay in the  
14 case primarily because of the respondent's scheduling  
15 issues. I think in one case I had to wait four weeks  
16 or so to interview him.

17 Also, he had said, Here's why I think there's a  
18 conspiracy and it's based on the conversation in the  
19 dining hall. So I did investigate those potential  
20 defenses. If there had been some nugget anywhere that  
21 would have suggested that I would find something  
22 helpful to him in those text messages between the two  
23 students, I would certainly have asked for them, but  
24 under the circumstances it felt just -- and also his  
25 specific request for them were very vague. It was

1       not -- it was just it would be helpful to provide  
2       general context about the relationship.

3           So you know, sort of on balance weighing  
4       everything that I had to get done, it was not likely  
5       that there was going to be something there that I would  
6       need to do, and I didn't want to waste time going down  
7       that road.

8           THE COURT: I understand that. You may be  
9       right. I think it would have been a lot of text  
10      messages. There's no question that people text a lot.

11           THE WITNESS: A lot.

12           THE COURT: I get that. But I thought I read in  
13      your retainer agreement that you have a paralegal or  
14      someone who works with you? Isn't that part of your  
15      office setup?

16           THE WITNESS: Sometimes, yes.

17           THE COURT: Brown was paying you not only for  
18      your services but for the services of people who work  
19      in your office.

20           THE WITNESS: I did not use a paralegal in this  
21      case.

22           THE COURT: But you could have. It was part of  
23      your retainer agreement.

24           THE WITNESS: At the time, I don't think that I  
25      had anybody working as a paralegal at the time. I also

1 am conscious of the costs of the investigation, which I  
2 think are -- they can be really prohibitive so I don't  
3 want to make it impossible for universities and schools  
4 to do a decent job.

5 THE COURT: I understand. I guess what I'm  
6 getting at is you, in this paragraph, you seem to be  
7 explaining to the panel that this is not something that  
8 they should be concerned about or get into because --  
9 and you're providing them an explanation for the  
10 animosity and that they need not worry about  
11 conversations that might have occurred between  
12 complainant and Witness 9. And I assume the panel  
13 follows your direction.

14 But it is possible that that text message chain,  
15 if it's anything like all these other text messages  
16 that occurred between the complainant and the  
17 respondent, might convey some information that could be  
18 informative in a case that you just characterized as  
19 one which you told the panel, Good luck, or this is  
20 close, or whatever it is you said to them. That's what  
21 I'm trying to -- I'm trying to reconcile that.

22 But I think I understand. You made a judgment  
23 and that's your job to make judgments about the  
24 evidence. I don't want you to interpret any of my  
25 questions as being judgmental. They're not. But it's

1 my way of trying to get to the heart of the matter.

2 All right. Does counsel wish to follow-up on  
3 anything I asked about?

4 MR. RATCLIFFE: No, your Honor.

5 MR. RICHARD: No, your Honor.

6 THE COURT: All right. Then I think your  
7 testimony is complete. You may step down.

8 THE WITNESS: Thank you, your Honor.

9 THE COURT: Thank you. We'll take a ten-minute  
10 break.

11 (Recess.)

12 THE COURT: Okay. Mr. Ratcliffe, are you ready  
13 to call your next witness?

14 MR. RATCLIFFE: Yes. Beau.

15 THE COURT: Before the witness is sworn, I think  
16 the witness's name has been made -- referred to many  
17 times. I'm going to let him be sworn in in the normal  
18 course. When it comes time for redacting the  
19 transcript, you can just take care of that. You  
20 mentioned his name numerous times.

21 So let's swear the witness.

22 BEAU [REDACTED], PLAINTIFF'S WITNESS, SWORN

23 THE CLERK: Please state your full name and  
24 spell your last name for the record.

25 THE WITNESS: Beau [REDACTED],

1 [REDACTED].

2 THE COURT: Okay. Good afternoon,

3 Mr. [REDACTED].

4 THE WITNESS: Good afternoon.

5 THE COURT: You may proceed.

6 **DIRECT EXAMINATION BY MR. RATCLIFFE**

7 Q. You were a student at Brown University?

8 A. Yes.

9 Q. What year did you -- how many years have you  
10 completed?

11 A. Three.

12 Q. So you completed your junior year?

13 A. That's correct.

14 Q. So when did you apply to Brown University?

15 A. In the spring of 2013.

16 THE COURT: Could you get a little closer to the  
17 microphone, please.

18 A. In the spring of 2013.

19 Q. And did you apply to other schools?

20 A. Yes, I did.

21 Q. And were you accepted at other schools?

22 A. I was.

23 Q. And what schools were those?

24 A. Cornell, University of Chicago, Johns Hopkins,  
25 Rutgers, a few others.

1 Q. Okay. Why did you choose Brown?

2 A. I chose Brown because I thought it would be fun to  
3 go to, and also because it would have the best chance  
4 of getting me into Harvard Law School given the  
5 acceptance rate of Brown graduates to Harvard.

6 Q. You said Harvard Law School. Did you have law  
7 school aspirations?

8 A. Yes.

9 Q. And did your family pay tuition for Brown  
10 University?

11 A. Yes.

12 Q. And do you know if they prepared the tuition?

13 A. Yes.

14 Q. So they paid all four years at once?

15 A. That's correct.

16 Q. Do you know approximately how much money that was?

17 A. Yes. It was \$177,600.

18 Q. That was just for tuition?

19 A. I believe so.

20 Q. Now, when you went to Brown University, did you --  
21 did you attend orientation?

22 A. Yes.

23 Q. And as part of the orientation, were you directed  
24 -- or at some point were you directed to look at the  
25 Code of Student Conduct?

1 A. Yes, we were.

2 Q. Do you recall if you actually reviewed the Code of  
3 Student Conduct?

4 A. I did.

5 Q. And were you given a hard copy of it or was it --

6 A. No.

7 Q. So how did you view it?

8 A. Online. On the Internet.

9 Q. So what year -- so that was this 2013-'14?

10 A. Yes.

11 Q. And you've been here during the trial, the Code of  
12 Student Conduct was put up.

13 So a document similar to Exhibit 2 although  
14 online it was called the Code of Student Conduct at  
15 Brown University?

16 A. Yes.

17 Q. And at some point, did you review the 2014-'15  
18 Code of Student Conduct?

19 A. I did.

20 Q. 2014-'15, that was when you were a sophomore?

21 A. Yes. It was e-mailed out to the student body.

22 Q. When the Code of Student Conduct was e-mailed to  
23 you, was there any directions with the e-mail?

24 A. I don't remember.

25 Q. But the Code of Student Conduct was sent to you

1 for what purpose?

2 A. To review it. To notify the students that there  
3 was a new Code.

4 Q. You viewed it online again?

5 A. Yes.

6 Q. And did you read -- again, in 2014, you read it?

7 A. Yes.

8 Q. Now, in connection with this case, you've  
9 obviously reread the Code of Student Conduct?

10 A. Many times.

11 Q. Now, when you -- you received a complaint in this  
12 matter?

13 A. Yes.

14 Q. And at some point, did you refer to the 2014-'15  
15 Code of Student Conduct?

16 A. Yes, I did.

17 Q. And was there a -- why was that?

18 A. I wanted to know what the violation that I was  
19 being charged with was.

20 Q. And do you recall an e-mail being forwarded to  
21 you, which has previously been introduced as Exhibit 7?

22 A. Yes, I do.

23 Q. And what was your understanding after having read  
24 that e-mail?

25 A. My understanding was that the 2014-'15 Code of

1       Student Conduct applied since the alleged incident took  
2       place in 2014.

3       Q.     Now, when -- so the complaint against you, you  
4       said what did it allege?

5       A.     It alleged sexual misconduct.

6       Q.     Then did you look at a specific portion of the  
7       Code of Student Conduct when you received the  
8       complaint?

9       A.     Yes. Section III.

10      Q.     And did you read it?

11      A.     Yes.

12      Q.     And this is what you read?

13      A.     Yes.

14      Q.     And there's a comment there?

15      A.     There is.

16      Q.     And did you consider the comment?

17      A.     Of course.

18      Q.     And what did you consider the comment to mean?

19      A.     I considered the comment to mean an interpretation  
20       of Section III(a) and Section III(b).

21      Q.     And did you draw any conclusions as a result of  
22       reading the conduct?

23      A.     Yes, I did. I read the Conduct and I understood  
24       it to mean, as I had previously understood it to mean,  
25       that using force, threat, intimidation or if the

1 student was impaired would constitute sexual assault.

2 Q. Or sexual misconduct?

3 A. Yes. I apologize.

4 Q. Now, did you, in reading the Code, did you read  
5 the -- did you ever read a section that dealt with the  
6 affected comment or how comments should be interpreted?

7 A. Yes. I do recall reading those.

8 Q. And that states, (Reading:) The comments  
9 contained herein are offered as a guide to understand  
10 the University's policies and not to be confused with  
11 the policies themselves.

12 What was your understanding as a result of  
13 reading that?

14 A. My understanding was that they were offered to be  
15 a guide and not binding upon the University.

16 Q. And what was your understanding of as "to be a  
17 guide"?

18 A. That it was the University's interpretation and  
19 how the students -- how myself should understand  
20 Section III of the Code of Conduct.

21 Q. In preparing for the defense of this case, did you  
22 look at the -- I'm going to show it to you, previously  
23 entered as Exhibit 4, the Title IX Policy?

24 THE COURT: Mr. Ratcliffe, I'm actually  
25 struggling a little bit to understand what the

1 relevance of this testimony is other than I assume you  
2 need a little bit of this testimony in order to support  
3 your motion to amend the complaint to add a promissory  
4 estoppel count. And I think that you've pretty much  
5 laid that out except you haven't asked him questions of  
6 reliance on it, but I assume you're going to do that.

7 But beyond that, what value is testimony from --

8 MR. RATCLIFFE: Just with respect to his  
9 understanding of the Code, his understanding of what he  
10 read and his understanding of what he was being charged  
11 with.

12 THE COURT: I think that's, frankly, in all of  
13 the materials.

14 MR. RATCLIFFE: I'll move on.

15 MR. RICHARD: Your Honor, just contextually,  
16 this is an issue that has come up in discovery. It  
17 will be a topic of my examination as well. I believe  
18 we're dealing with the expectations of the student and  
19 interpretation of the Code and the relevance of those  
20 expectations and breach of contract claim. The  
21 standard is reasonable expectation of the students so I  
22 think both of us intend to ask those questions.

23 THE COURT: All right. So I understand. Then I  
24 think you should really zero in on that and Mr. Richard  
25 can zero in on that as well.

1 Q. When you went to the hearing, what were your  
2 expectations regarding what standard was going to be  
3 applied by the Title IX panel?

4 A. I'm sorry. By "standard," do you mean --

5 Q. Which Code?

6 A. The 2014-2015 Code.

7 Q. And why was that?

8 A. Because the incident took place in 2014.

9 Q. Anything else?

10 A. Because of the letter you just showed me.

11 Q. In connection with preparing for the -- let me  
12 just ask you another question.

13 At the hearing, you were on the phone when Allie  
14 was providing her explanation or her testimony before  
15 the panel?

16 A. Yes, I heard that.

17 Q. And what did you hear her talk about?

18 A. I heard her talk about false accusations against  
19 myself, and allegations that I had manipulated her into  
20 a sexual encounter, and allegations that I violated the  
21 2015-2016 Title IX Policy.

22 Q. And you heard her specifically reference the Title  
23 IX Policy?

24 A. I believe so.

25 Q. And did you hear her reference definitions?

1 A. I don't remember.

2 Q. What was your reaction when she was referencing  
3 the Title IX Policy?

4 A. I mean, I thought it wasn't fair, and I thought  
5 that I was being charged with violating something that  
6 didn't exist at the time of the alleged conduct.

7 Q. Well, as a result of being at the hearing and  
8 hearing Allie talk about the 2015-2016 policy, did you  
9 do anything?

10 Let me ask you another question. Did you  
11 receive a letter the following day from Amanda Walsh?

12 A. Yes.

13 Q. Okay. And that letter has been -- I can put it  
14 up.

15 MR. RATCLIFFE: Twenty-six.

16 Q. Is that a copy of the letter you received?

17 A. Yes. I saw this earlier yesterday.

18 Q. What was the conclusion that you drew from  
19 receiving that letter?

20 A. That the panel was going to disregard Allie's  
21 references to the 2015-2016 Policy and instead relied  
22 upon the 2014-2015 Code of Student Conduct.

23 Q. Now, prior to the hearing, were you ever told by  
24 anybody at Brown University that the Title IX panel  
25 would consider the 2015 Title IX Policy?

1 A. No.

2 Q. When you were at the hearing, you went into the  
3 hearing room with your counsel?

4 A. Yes. With yourself, Mr. Ratcliffe.

5 Q. Okay. And describe the makeup of the panel. How  
6 many people were present?

7 A. Three women, two I think Brown faculty members and  
8 one undergraduate student.

9 Q. And there was -- what was the gender of the panel?

10 A. All female.

11 Q. Did you have any concerns about the panel?

12 A. Yes.

13 Q. What were they?

14 A. I was concerned that the panel was all female and,  
15 additionally, I recognized one of the panel members.

16 Q. Who was the panel member that you recognized?

17 A. Kimberley Charles.

18 Q. Did you know her beforehand?

19 A. I actually was in a class with her that spring  
20 semester.

21 Q. When you got the list of the panel members, did  
22 you know that Kimberley Charles was in a class with  
23 you?

24 A. No.

25 Q. So got to the hearing and you just recognized her

1 from sight?

2 A. Yeah. It was the 2013 class, but I didn't know  
3 her name.

4 Q. Now, did you have any concerns that there were no  
5 men on the panel?

6 A. I did.

7 Q. Why was that?

8 A. I felt that men and women inherently have  
9 different perspectives regarding issues of -- issues of  
10 sex essentially.

11 Q. And you were actually called to provide your  
12 testimony first; correct?

13 A. Yes.

14 Q. And did you -- were you concerned about that?

15 A. I was, and I asked if I could give a response to  
16 Allie's statement.

17 Q. You were the person who was defending this case,  
18 right?

19 A. Yes.

20 Q. Now, you received the panel decision in this  
21 matter?

22 A. I did.

23 Q. I believe you were here when Amanda Walsh  
24 testified. You received a phone call from her?

25 A. Yeah, she called me.

1 Q. And this is the letter -- did she follow-up that  
2 phone call with a letter?

3 A. Yes.

4 Q. And you've looked at this letter, and you've read  
5 it a number of times?

6 A. Yes.

7 Q. And how did you feel after receiving this letter?

8 A. I was shocked, first of all, by the fact that I  
9 was found responsible for something I didn't do; and  
10 secondly, for the fact that the panel relied upon the  
11 2015-2016 Title IX Policy when I had been assured that  
12 the 2014-2015 Code of Student Conduct would be used.

13 Q. Did you appeal?

14 A. Yes.

15 Q. And what was the basis of the appeal?

16 A. The basis of the appeal was substantial procedural  
17 error as well as that the decision was manifestly  
18 contrary to the evidence.

19 Q. And did you -- and you prepared -- with the  
20 assistance of counsel, you prepared an appeal letter;  
21 correct?

22 A. That's correct.

23 Q. This has been previously introduced, and the  
24 appeal addresses the issues that you were raising in  
25 the appeal; correct?

1 A. Yes.

2 Q. And the one being that the procedural error being  
3 the 2014- '15 Code was applied?

4 A. Yes.

5 Q. And excuse me, the 2015- '16 Code definition.

6 A. Yes.

7 Q. Now, were you given an opportunity to orally  
8 advocate your position at the appeal?

9 A. No, I was told that I couldn't.

10 Q. And did you expect that anybody would get that  
11 opportunity?

12 A. No.

13 Q. Okay. And did you get the appeal letter?

14 A. I'm sorry?

15 Q. Did you receive a reply with respect to the  
16 appeal?

17 A. Yes. My appeal was denied.

18 Q. And with respect to the procedural error, what's  
19 your understanding of what the appeals panel concluded?

20 A. That there was no procedural error.

21 MR. RATCLIFFE: Could I have a moment, your  
22 Honor?

23 THE COURT: Yes.

24 (Pause.)

25 MR. RATCLIFFE: Nothing further, your Honor.

1                   THE COURT: Okay. Thank you.

2                   Mr. Richard.

3                   MR. RICHARD: Thank you, your Honor.

4                   Your Honor, I'll still refer to the witness by  
5 his first name.

6                   THE COURT: That's fine.

7                   **CROSS-EXAMINATION BY MR. RICHARD**

8                   Q. Good afternoon, Beau.

9                   A. Good afternoon, Mr. Richard.

10                  Q. When you enrolled in Brown University during the  
11 '13- '14 academic year, you mentioned that you read the  
12 Code of Student Conduct?

13                  A. Yes.

14                  Q. Did you read it cover to cover?

15                  A. I don't know if there was a back cover, but I read  
16 the entirety of it, yes.

17                  Q. And the same would be true for the '14- '15 Code of  
18 Student Conduct during your sophomore year?

19                  A. Yeah, I read the whole thing.

20                  Q. Had you read the whole thing prior to November 10,  
21 2014?

22                  A. Yes.

23                  Q. I'm referring to Exhibit 2, which is the '14- '15  
24 Code. I can show you the '13- '14 Code, but we're all  
25 in agreement here that there was no change in Offense

1       III in its wording between '13- '14 and '14- '15;  
2       correct?

3       A.    That's correct. I reviewed them during the  
4       deposition.

5                    MR. RICHARD: One moment, your Honor. I need to  
6       find an exhibit.

7       Q.    Exhibit 16. Do you recognize this e-mail?

8       A.    Yes.

9       Q.    What is it?

10      A.    It's my response to Djuna's report requesting  
11       certain changes.

12      Q.    And this is the substance of your request for  
13       changes; correct?

14      A.    Yes, and the attached document.

15      Q.    The hearing in this matter occurred on April 14th,  
16       2016?

17      A.    I honestly don't remember the date but that sounds  
18       about right.

19      Q.    So these comments were made approximately a month  
20       beforehand?

21      A.    Sure.

22      Q.    You referred to the standard in the '14- '15 Code  
23       that we just reviewed the Offense III standard. And  
24       you state that in that version of the Code, '14- '15  
25       Code, the definition of "sexual conduct" is vastly

1       different than what it is now. What were you comparing  
2       it to?

3       A.     The 2015-2016 Title IX Policy.

4       Q.     If no one had mentioned to you that that policy  
5       applied in the proceedings, why were you making that  
6       comparison?

7       A.     Because Djuna Perkins essentially alluded to that  
8       policy in her draft report.

9       Q.     As far as the terms of Offense III, what was your  
10      understanding of the comment that states that the  
11      offense encompasses a broad range of behaviors?

12      A.     My understanding was that if an individual were to  
13      use force, threat, intimidation or advantage gained  
14      through another student's incapacitation, it would  
15      constitute sexual misconduct.

16      Q.     So your understanding, if I'm understanding your  
17      testimony correctly, is that the examples listed after  
18      the comma and the "including" were an exclusive list?

19      A.     Yes.

20      Q.     So the broad range of behaviors could only include  
21      the examples specifically mentioned in this comment?

22      A.     To constitute a violation of Section III(a) and  
23      (b), yes.

24      Q.     And you go on to say that the definition -- strike  
25      that.

1                   You go on to say that the offense does not  
2 include a definition of "coercion;" correct?

3   A. I'm sorry. Could you repeat.

4   Q. Sure. After your citation to the offense in the  
5 middle of this document, you start at the bottom, Quite  
6 a bit of the report, your report, including Footnote 22  
7 focuses on the possibility that I coerced Allie to  
8 engage in sexual conduct.

9                   Why were you addressing coercion?

10   A. Because it was the word that Djuna had used.

11   Q. And you felt that coercion was not part of the  
12 broad range of offenses?

13   A. Coercion in the sense that she had used it.

14   Q. Well, in what offense did she use it?

15   A. She used it synonymously with manipulation.

16   Q. Was the word "manipulation" ever mentioned her  
17 draft report?

18   A. No.

19   Q. So how do you know she used it synonymously with  
20 manipulation?

21   A. Well, the way that I had understood the word  
22 "coercion" to mean, as I mentioned previously, is the  
23 use of a threat of force. And in the context Djuna was  
24 not using it to mean that.

25   Q. Where did you get that definition?

1       A. From the training I received at Brown University.

2       Q. Go on to the next page. You say, Furthermore,  
3       your report does not contain a definition of  
4       "coercion," which is use of force or intimidation to  
5       obtain compliance.

6                    Correct?

7       A. Correct.

8       Q. And is that the definition you got from a  
9       dictionary?

10      A. I don't remember.

11      Q. Did you provide a citation?

12      A. I don't remember.

13      Q. Well, it says, Coercion is the use of force.  
14      That's one of the examples; correct?

15      A. Yes.

16      Q. And one of the examples listed in the comment is  
17      use of force?

18      A. Yes.

19      Q. And you go on to say "or" that's something  
20      different, intimidation to obtain compliance; correct?

21      A. Yes.

22      Q. Intimidation is listed as one of the examples in  
23      the comment?

24      A. Yes.

25      Q. So are you acknowledging to Ms. Perkins that

1 coercion is within the scope of broad range of  
2 behaviors?

3 A. The way I define "coercion" is force or the threat  
4 of force or rather intimidation. The way Djuna used  
5 "coercion" was different.

6 Q. So were you acknowledging that the word "coercion"  
7 could fall within the broad scope of behaviors as you  
8 understood it?

9 A. As I define the word "coercion," yes. It was  
10 force or the threat of force, which is what the comment  
11 says.

12 Q. Then why were you criticizing her for using the  
13 word "coercion"?

14 MR. RATCLIFFE: Objection, your Honor. I  
15 believe this is being argumentative.

16 THE COURT: Overruled.

17 Go ahead.

18 A. Because she was using "coercion" in a different  
19 way.

20 THE COURT: What exhibit is it that you're  
21 referring to?

22 MR. RICHARD: Your Honor, this is Exhibit 16.

23 Q. Show you Exhibit 24, which you know from this  
24 lawsuit and trial --

25 A. Yes.

1 Q. -- are the notes that Amanda Walsh took?

2 A. That's correct.

3 Q. And at the bottom of the page, she represents that  
4 you said the investigator conflated the two different  
5 policies.

6 Did you say there was a conflation of two  
7 policies?

8 A. I did.

9 Q. Which two policies were you referring to?

10 A. The 2014-2015 Code of Student Conduct and the new  
11 2015-2016 Title IX Policy.

12 Q. So you raised the '15-'16 Title IX Policy as well  
13 as Allie?

14 A. I'm sorry?

15 Q. You mentioned Allie raised the '15-'16 policy at  
16 the hearing; correct?

17 A. Could you repeat the question.

18 Q. When Allie came in to speak after you did and you  
19 listened, you heard her mention the '15-'16 policy;  
20 correct?

21 A. Yes.

22 Q. You also mentioned it when you spoke?

23 A. I mentioned that that policy did not apply to this  
24 case.

25 Q. So how is it that the investigator conflated the

1 two policies?

2 A. I don't understand the question.

3 Q. You said the investigator conflates two different  
4 policies.

5 A. Yes. By the use of the word "coercion."

6 Q. But you testified a few moments ago that coercion  
7 could include intimidation and fear; correct?

8 A. I testified that coercion was the use of force or  
9 the threat of use of force. That's not how Djuna  
10 Perkins used the word in her report.

11 Q. You say that the current policy covers all aspects  
12 of sexual assault. What do you mean by that?

13 A. I meant to include the inclusion of manipulation,  
14 which is included in the 2015-2016 Title IX Policy.

15 Q. But the old policy only covered force or threat of  
16 force? Is that your understanding?

17 A. As well as if a student was incapacitated.

18 Q. So again, the broad range of behaviors could only  
19 include, in your view, the examples listed in the  
20 comment?

21 A. That's what I believed it included in my view,  
22 yes.

23 Q. Exhibit 30. Do you recognize this document?

24 A. Yes.

25 Q. What is it?

1 A. It's my appeal of the Title IX panel decision.

2 Q. And you raise as one of the grounds your  
3 contention that the panel should have applied the  
4 definition as stated in the '14-'15 Code?

5 A. Yes.

6 Q. You state in the middle that it's your  
7 understanding that the Code says what isn't okay to do,  
8 but doesn't say what it is okay to do?

9 A. That's what the Code says.

10 Q. Where did you get that understanding?

11 A. From what the Code says.

12 Q. What do you mean when you say the Code says what  
13 you can't do as opposed to what you can do?

14 A. Well, for example, Section III says that a broad  
15 range of behaviors including acts of force, threat,  
16 intimidation or advantage gained by the offended  
17 student's mental or physical incapacity or impairment  
18 of which the offending student was aware or should have  
19 been aware, dot, dot, dot --

20 THE WITNESS: I'm sorry. I know I'm speaking  
21 fast. Do you want me to just go over --

22 A. -- or impairment of which the offending student  
23 was aware or should have been aware are examples of  
24 things that are violations of the Code of Conduct.

25 Q. You then cite the '14-'15 Code, specifically

1       Offense III; correct?

2       A.    Yes.

3       Q.    The last paragraph has a series of questions. Why  
4       did you list those questions in your appeal?

5       A.    To indicate what the relevant questions that the  
6       panel should have asked in determining the finding of  
7       my hearing.

8       Q.    In fact, you say after these four questions, if  
9       the panel answered no to any of these questions they  
10      should have found you not responsible; correct?

11      A.    Yes.

12      Q.    So the first question is, Did John Doe use  
13      physical force to overpower Allie; correct?

14      A.    Yes.

15      Q.    Does that come from the first example?

16      A.    That's correct.

17      Q.    Second question is, Did John Doe threaten Allie?

18      A.    Yes.

19      Q.    Does that second question follow the second  
20      example?

21      A.    It does.

22      Q.    The same would go for the third and fourth?

23      A.    Yes.

24      Q.    So again, in your appeal, you're contending that  
25      the broad range of behaviors only include the example

1       cited in the comment after the comma and the word  
2       "including"?

3       A.    Yes.

4       Q.    One of your questions indicates, Did Beau  
5       intimidate Allie or place her in fear; correct?

6       A.    Yes.

7       Q.    Where in the examples cited in the comment is  
8       there any reference to placing someone in fear?

9       A.    That was my understanding of what "intimidation"  
10      meant.

11      Q.    But you say, Did Beau intimidate or place her in  
12      fear?

13      A.    Intimidate her or, in other words, place her in  
14      fear.

15      Q.    Are they two different things?

16      A.    No.

17      Q.    During the summer of 2013, after you were accepted  
18      to Brown, do you recall that you had to take an online  
19      tutorial?

20      A.    Yes, I did.

21      Q.    It was mandatory?

22      A.    I think so.

23      Q.    And wasn't its stated purpose to introduce you to  
24      the principles of Brown University?

25      A.    I don't remember what the stated purpose was.

1       Q.    You recall at your deposition we went over the  
2       tutorial and you acknowledged taking it?

3       A.    Yes.

4            MR. RICHARD:   Exhibit 40, your Honor.

5            MR. RATCLIFFE:   No objection to the tutorial,  
6       your Honor.

7            THE COURT:   All right.   Forty will be full  
8       without objection.

9                           (Plaintiff's Exhibit 40 admitted in full.)

10       Q.    This is a printout of the tutorial.   We reviewed  
11       this at your deposition; correct?

12       A.    I think so, yes.

13       Q.    The start of the tutorial addresses you as an  
14       incoming student; correct?

15       A.    It does.

16       Q.    And it indicates that prior to your arrival at  
17       Brown, it is essential you understand the values and  
18       principles of our community?

19       A.    Yes.   That's what it says.

20       Q.    So as you took this, you understood that this was  
21       your introduction to the principles of the Brown  
22       community?

23       A.    That's correct.

24       Q.    There was a section in this tutorial, I'm not  
25       going to go all through 100 plus questions, but there

1       was a section dealing with sexual assault issues;  
2       correct?

3       A.    Yes, there was.

4       Q.    And question 95 were a series of true/false  
5       questions; correct?

6       A.    That's correct.

7       Q.    And one of those questions asked you to respond  
8       true or false if consent may be invalidated if there is  
9       coercion, intimidation or threat, or if advantage was  
10      gained over someone because of mental or physical  
11      incapacity. Do you recall how you answered that?

12      A.    I answered that true.

13      Q.    So upon taking this tutorial and introducing  
14      yourself to the Brown community standards, you  
15      understood that consent could be invalidated if there  
16      was coercion?

17      A.    Yes, that's correct.

18      Q.    But you subsequently in your case challenge the  
19      use of the word "coercion. "Why is that?

20      A.    Because "coercion" was used in a different  
21      meaning.

22      Q.    Than what?

23      A.    I'm sorry?

24      Q.    Used in a different meaning than what?

25      A.    Than it is here.

1 Q. How is it used here?

2 A. Here it's used to indicate force.

3 Q. Does it say that?

4 A. I understood it to mean if there is coercion  
5 meaning force, intimidation, threat or if the person is  
6 mentally or physically unable to communicate  
7 willingness, just as the Code says.

8 Q. Do you recall as part of this tutorial that there  
9 was a link to a video?

10 A. I remember seeing the video. I don't know if it  
11 was linked to the tutorial.

12 Q. The name of the video was "Brown Students Ask for  
13 Consent;" correct?

14 A. Yes.

15 Q. And you've seen the video more than one time,  
16 haven't you?

17 A. I have.

18 Q. How many times have you seen it?

19 A. Seven?

20 Q. Seven times prior to November 10th, 2014?

21 A. No.

22 Q. So you saw it before November 10, 2014, again to  
23 the best of your recollection how many times?

24 A. You're asking me how many times I saw it before  
25 November --

1 Q. November 10, 2014.

2 A. Approximately three.

3 MR. RICHARD: Your Honor, I have marked that  
4 video as an exhibit in this case and given it to the  
5 clerk. It's a four-minute video, and I'd move for its  
6 admission; and with the Court's permission I'd like to  
7 just play it and ask the witness a few questions.

8 MR. RATCLIFFE: No objection.

9 THE COURT: That's fine. What exhibit number is  
10 it?

11 MR. RICHARD: I believe it's the last one, your  
12 Honor. It is Exhibit 46.

13 THE COURT: All right. Exhibit 46 will be full  
14 and you may play it.

15 (Plaintiff's Exhibit 46 admitted in full.)

16 (Video played.)

17 Q. Mr. [REDACTED], you saw this video when you took  
18 the online tutorial?

19 A. I believe so, yes.

20 Q. So you understood at the time you took it that  
21 this video was part of values and principles of the  
22 Brown community, isn't that true?

23 A. Yes.

24 Q. You saw this video the second time when?

25 A. During orientation.

1 Q. That would have been in September of 2013?

2 A. Yes.

3 Q. And you indicated you may have seen it a third  
4 time before November 10, 2014. Do you recall when that  
5 was?

6 A. No.

7 Q. And the video mentions "coercion," does it not?

8 A. Yes.

9 Q. What's your understanding of "coercion"?

10 A. Force or the threat of force.

11 Q. After seeing that video and reading the Code, did  
12 you believe that the broad range of behaviors was only  
13 the four examples listed within it?

14 A. I believed that the only violations of the Code of  
15 Conduct were what was listed in the Code of Conduct.

16 Q. Which were those four examples?

17 A. I believe it was four.

18 Q. You mentioned training at orientation. What was  
19 that?

20 A. First, we sat through a video presentation. I  
21 believe they showed the same video. Then there was a  
22 play, then we went and met with our residential peer  
23 leaders and individuals living in our residence halls  
24 and filled out another quiz and talked to people in our  
25 unit about consent.

1       Q.    So the first session was at the Pizzitola Sports  
2       Arena?

3       A.    That's correct.

4       Q.    It was approximately 90 minutes long?

5       A.    Approximately.

6            MR. RICHARD: Your Honor, Exhibit 42.

7            THE COURT: Any objection?

8            MR. RATCLIFFE: No objection.

9            THE COURT: Forty-two will be full.

10                   (Plaintiff's Exhibit 42 admitted in full.)

11        Q.    Do you recognize this as the orientation pamphlet  
12        that you received?

13        A.    It was.

14        Q.    It's a little difficult to read because of the  
15        shading. I can give you a copy of that.

16        A.    Also, Mr. Richard, I apologize. I don't actually  
17        know if that video was linked to the quiz we filled out  
18        online. I'm not entirely certain that that was the  
19        case.

20        Q.    But you recall seeing it at least twice before  
21        November 10th?

22        A.    Absolutely. Absolutely.

23            MR. RICHARD: Your Honor, may I approach just to  
24        give the witness a hard copy?

25            THE COURT: Yes.

1 Q. Do you recall the "Speak About It" presentation?

2 A. Yes.

3 Q. That was the play?

4 A. Yes, it was.

5 Q. Okay. And one of the topics that it addressed was  
6 how to negotiate consent; correct?

7 A. Yes. That's what pretty much the whole play was  
8 about.

9 Q. What specifically do you recall about how they  
10 presented the negotiation of consent?

11 A. The only skit I really remember from that play is  
12 one where there was a drunk student and they said that  
13 consent can't be obtained through incapacitation.

14 Q. Did the play have any discussion about coercion?

15 A. Not that I can remember.

16 MR. RICHARD: One minute, your Honor, just to  
17 find an exhibit.

18 THE COURT: Sure.

19 A. It may have. It was certainly referenced during  
20 the presentation overall. In the video, at least. I  
21 just don't know if it was in the play.

22 Q. Okay. But you remember the presentation as a  
23 whole to address issues of coercion?

24 A. Sure.

25 Q. And your recollection is only if there was

1       intimidation or threat of force I believe is your  
2       definition?

3       A.     Or use of force.

4       Q.     During the presentation, was there a PowerPoint?

5       A.     Yes, there was.

6       Q.     And do you recall during the PowerPoint there was  
7       a slide about "Brown Students Ask for Consent"?

8       A.     I did. They printed the slide out and posted it  
9       throughout campus.

10            MR. RICHARD: This is Exhibit 43. It's the  
11       PowerPoint presentation. It's a full exhibit, but I  
12       only intend to ask about the last page.

13            MR. RATCLIFFE: No objection.

14            THE COURT: Is 43 the entire PowerPoint?

15            MR. RICHARD: Your Honor, I would just intend to  
16       introduce the last page.

17            MR. RATCLIFFE: Why don't we just mark the whole  
18       thing.

19            THE COURT: Just put the whole thing in and then  
20       you can focus on the last page.

21                    (Plaintiff's Exhibit 43 admitted in full.)

22       Q.     This slide was presented at the orientation?

23       A.     Yes. It was the last one, I believe.

24       Q.     And do you recall what was discussed about it?

25       A.     During the presentation, they gave examples of

1       things to say to your partner listed in the bubble.

2       Q.     And you've seen this all around campus; correct?

3       A.     Yes.

4       Q.     And you saw it around campus prior to November  
5           10th, 2014; correct?

6       A.     I don't remember.

7       Q.     You certainly saw it at orientation?

8       A.     On the slide show, yes.

9       Q.     In addition to the bubbles, there is the statement  
10      at the bottom. It says, (Reading:) This is meant to  
11      help manage people take care of themselves and each  
12      other. People who do not have good intentions may  
13      manipulate the language of consent to hurt someone.

14           Have you ever seen that language?

15       A.     That's what it says on the slide.

16       Q.     Have you ever seen it?

17       A.     I don't understand.

18       Q.     Well, the slide references manipulation; correct?

19       A.     It mentions manipulation in the language of  
20      consent, yes.

21       Q.     And your position in this case is that the word  
22      "manipulation" had no role in the broad range of  
23      behaviors subject to Offense III?

24       A.     That's correct.

25       Q.     There's a website listed in the bottom right-hand

1       corner. Have you ever viewed that website?

2       A. I don't remember.

3       Q. Do you know if Brown published its materials to  
4       students about issues of sexual assault?

5       A. Yes, it does.

6       Q. Consent?

7       A. Yes.

8       Q. Is it online?

9       A. Yes, it is.

10      Q. Have you ever viewed it?

11      A. Yes. I don't know what the website was, though.  
12      I Googled the policies by name.

13      Q. And again, based upon viewing the information on  
14      those websites, it's your understanding that the broad  
15      range of behaviors could only include four cited --

16      A. I'm sorry. Are you referring to the 2014-2015  
17      Code?

18      Q. Yes.

19      A. Yes.

20      Q. After the session at the Pizzitola Center, was  
21      there an additional session?

22      A. Yes, there was.

23      Q. What was that?

24      A. As I mentioned earlier, we met with our RPLs and  
25      people in our unit and we talked about consent, filled

1 out another quiz.

2 Q. And what did they talk about consent?

3 A. We talked about how sexual encounters required  
4 consent and what would constitute a non-consensual  
5 encounter.

6 Q. And do you recall that I showed you a copy of the  
7 quiz at your deposition; correct?

8 A. Yes, I do.

9 Q. And one of the topics that that quiz addressed is  
10 giving and receiving consent is a continuous process  
11 and one where both parties are actively and  
12 enthusiastically involved in the decision-making.

13 Is that correct?

14 A. Yes, that's what it said.

15 Q. So do you recall any discussion at the training  
16 about consent being a continuous process?

17 A. Yes.

18 Q. How long was that session?

19 A. About 40 minutes.

20 Q. So between the Pizzitola Center presentation and  
21 the follow-up smaller unit sessions, it was  
22 approximately two plus hours?

23 A. Yes.

24 Q. Did you ever receive any additional training at  
25 Brown concerning the issue of consent in sexual

1 relations?

2 A. Yes, I did.

3 Q. When did that occur?

4 A. Either in the spring of my freshman year or the  
5 fall of my sophomore year.

6 Q. And that was before November 10th, 2014?

7 A. Yes, it was.

8 Q. And didn't that session also address the issue of  
9 coercion?

10 A. I don't remember. I believe so. Yes, it did. It  
11 did.

12 Q. So based upon all of the training that you  
13 received prior to November 10th, 2014, was it your  
14 understanding that the word "coercion" did not fall  
15 within the broad ranges of behavior that fell under  
16 Offense III?

17 A. It depends how you define the word. I'm sorry.  
18 It depends.

19 Q. Depends on what?

20 A. How you define the word.

21 Q. Was there ever any discussion of "manipulation" at  
22 any of these trainings?

23 A. Not that I recall.

24 Q. I believe you testified on your direct examination  
25 that men and women have different perspectives on

1       consent?

2       A.    No. I said sex, I believe.

3       Q.    Sex? Did they have different perspectives on  
4       consent?

5       A.    I don't think so.

6       Q.    And at the hearing panel, you felt that you did  
7       not have a fair panel because there were three women  
8       there; correct?

9       A.    Yes. Partially.

10      Q.    Isn't it true that one of those women panelists  
11       voted to find you not responsible?

12      A.    Yes, that's true.

13      Q.    And in your appeal, isn't it true that one of the  
14       women panelists voted to grant your appeal on  
15       procedural grounds?

16      A.    That's true.

17            MR. RICHARD: One moment, your Honor.

18            THE COURT: Yes.

19            (Pause.)

20            MR. RICHARD: No further questions, your Honor.

21            THE COURT: Thank you.

22            Is there any further redirect?

23            MR. RATCLIFFE: Just one. I want to just  
24       publish and just have Beau identify the rest of Exhibit  
25       43.

**REDIRECT EXAMINATION BY MR. RATCLIFFE**

Q. So these were the slides that were shown at orientation; is that correct?

A. Yes.

Q. So the first one was just this way? Does Brown --  
Brown always puts Brown on everything they have, right?

A. Yes.

Q. The next slide was they give you an overview of Rhode Island law.

A. That's correct.

Q. First degree sexual assault, second degree sexual assault?

A. That's correct.

Q. Do you recall sitting there and them telling you about if you sexually penetrate someone with force, that could be first degree sexual assault under Rhode Island law; correct?

#### A.     Absolutely.

Q. And that if you have physical contact of a sexual nature without consent, you know, basically touching certain parts, that could be second degree sexual assault, right?

A. Yes.

Q. They went on to talk about what "mentally incapacitated" is; correct?

1 A. They did.

2 Q. Physically helpless?

3 A. Yes.

4 Q. Then the final slide before the talking heads  
5 part, they actually published Brown's Sexual Misconduct  
6 Policy, did they not?

7 A. Yes, they did. That's Section III and the comment  
8 from the 2014 -- or I guess the 2013-2014 Code.

9 MR. RATCLIFFE: Nothing further.

10 MR. RICHARD: May I ask one question, your  
11 Honor?

12 THE COURT: Certainly.

13 **RECROSS-EXAMINATION BY MR. RICHARD**

14 Q. After Brown showed the students the sexual  
15 misconduct policy, was the next topic the talking head  
16 slide?

17 A. Yes.

18 MR. RICHARD: No further questions.

19 THE COURT: Could you leave that slide up,  
20 please.

21 MR. RICHARD: I'm sorry, your Honor.

22 THE COURT: Okay. Thank you.

23 I have some questions for you. I'm going to  
24 refer to you as Beau consistent with my prior ruling.

25 So let's just start with that slide. There's

1       the statement at the bottom you were asked a question  
2       about, and I don't think I heard a clear answer on  
3       that.

4           So the statement says, (Reading:) This is meant  
5       to help well-meaning people take care of themselves and  
6       each other in sexual situations. People who don't have  
7       good intentions may manipulate the language of consent  
8       to hurt someone.

9           Now, I know you said -- I think you said that  
10       you've seen that poster or slide all over campus in  
11       different places, right?

12           THE WITNESS: Yes, your Honor.

13           THE COURT: And does that include everything on  
14       the page, including that statement there at the bottom?

15           THE WITNESS: To be completely honest, your  
16       Honor, I don't really read the fine print on the flyers  
17       around campus. I just recognized the top. I assume  
18       it's the same, but I can't say for certain.

19           THE COURT: But you've seen the poster around,  
20       right?

21           THE WITNESS: Yes, I have, your Honor.

22           THE COURT: You're saying you're just not sure  
23       you've ever focused on that language at the bottom; is  
24       that right?

25           THE WITNESS: Other than during the PowerPoint

1 presentation.

2 THE COURT: Okay. All right.

3 Now, a lot has been made here both before the  
4 panel and in this litigation about the claim that the  
5 Title IX, so-called Title IX Policy, '15-'16 policy  
6 applies a different standard. I think the words you  
7 used was vastly different than the '14-'15 standard.

8 And you have stated that you believe, your  
9 understanding of "coercion" as it's used in the  
10 '14-'15 -- let me just back up.

11 So your understanding is that "coercion" is  
12 included in the '14-'15 sexual misconduct description  
13 when it talks about non-consensual physical contact of  
14 a sexual nature. You agree that "coercion" is included  
15 in that depending -- if I heard you correctly,  
16 depending on how you define "coercion." Is that what  
17 your position is?

18 THE WITNESS: That's correct, your Honor. And I  
19 define "coercion" as the threat of force or use of  
20 force.

21 THE COURT: All right. So that's what I want to  
22 get to.

23 So your understanding of what Brown's policy is  
24 that makes up the contract that you say has been  
25 violated in this litigation, your understanding of

1       that, that definition of use of force or intimidation  
2       to obtain consent, where did you get that?

3           THE WITNESS: I'm sorry?

4           THE COURT: Where did you get that? Where did  
5       you get that definition of "coercion"? I don't think  
6       I've seen that anywhere in these materials. So where  
7       did you get that?

8           THE WITNESS: From the training I received.  
9       That was what I understood it to mean. It was always  
10      used synonymously with force or threat of force.

11           THE COURT: Okay. So we've gone through the  
12      training that you received, the PowerPoint and the  
13      questions that you answered, right?

14           THE WITNESS: Yes.

15           THE COURT: Consent may be invalid if there is  
16      coercion, intimidation or threat or if advantage is  
17      gained because a person is mentally or physically  
18      unable to communicate willingness. That roughly  
19      correlates with the comment to III of the '14-'15  
20      policy, roughly. I don't see this definition of use of  
21      force or intimidation as a definition of "coercion".

22           Where in the training or the PowerPoints or the  
23      questions and answers or the policy, where are you  
24      getting that?

25           THE WITNESS: Sure. Well, in the 2014-2015

1       Code, the only difference between that and the answer  
2       to the online quiz that you've just referred to is the  
3       difference between the word "coercion" and "force." So  
4       I assumed in that case that the words were used  
5       interchangeably.

6               Additionally, in other trainings that I've  
7       received, the safe training issued to my fraternity for  
8       an hour, the discussions with the RPLs as well as the  
9       discussions during the 90-minute presentation use  
10       "coercion" as a word that meant force or threat of  
11       force. That's how I understood it.

12               THE COURT: Well, all I know and all I can make  
13       a decision on is the evidence that's in the record.  
14       All right?

15               So you're saying that the word "coercion" and  
16       the word "force" have been used interchangeably? Is  
17       that what you're saying?

18               THE WITNESS: Yes. Force is a mechanism of  
19       coercion.

20               THE COURT: Well, sure. It is a mechanism of  
21       coercion. It could be. But I'm trying to get at where  
22       the definition comes from, that force -- your  
23       definition, as I understand it and as you have stated  
24       it, is the use of force or intimidation to obtain  
25       consent, right?

1                   THE WITNESS: Yes, your Honor.

2                   THE COURT: So the words I've seen in this,  
3 let's take this question and answer tutorial. It says,  
4 Coercion, intimidation, threat. So it uses the word  
5 "coercion" separately from the word "intimidation."

6                   THE WITNESS: That's correct.

7                   THE COURT: Right? The word "force" isn't  
8 mentioned anywhere in here, right?

9                   THE WITNESS: That's correct, your Honor.

10                  THE COURT: So, again, how do you get to this  
11 definition that coercion can only be the use of force  
12 or intimidation?

13                  THE WITNESS: My understanding was that the way  
14 that the Code defined it -- or not defined it but that  
15 the Code prohibited using force, threat, intimidation  
16 to obtain consent and that the word "coercion" used to  
17 reference that can refer to using force, threat or  
18 intimidation.

19                  THE COURT: So is it your position in this  
20 litigation and in the hearing before the panel that  
21 methods of coercion to obtain consent that don't  
22 involve force or intimidation are permitted under  
23 Brown's policy?

24                  THE WITNESS: Under the 2014-2015 Code of  
25 Student Conduct, yes.

1                   THE COURT: You believe that's the standard?

2                   THE WITNESS: Yes.

3                   THE COURT: Okay. So let me ask you a couple of  
4 questions then.

5                   If one student offers another student \$1,000 to  
6 have sex with him, is that permitted under the 2014-'15  
7 policy?

8                   THE WITNESS: I don't know.

9                   THE COURT: Well, I'm asking you. I'm asking  
10 what your view is, what your expectations are of that  
11 policy.

12                  THE WITNESS: I don't know if there are other  
13 relevant sections that might apply, but pursuant to  
14 Section III, yes, it would not constitute -- I  
15 apologize. No, it would not constitute a violation.

16                  THE COURT: So in your view that would not  
17 constitute a violation. Under this section, let's put  
18 aside any other sections. We're talking about this  
19 section.

20                  This section talks about non-consensual contact,  
21 physical contact of a sexual nature, right?

22                  THE WITNESS: Yes, it does, your Honor.

23                  THE COURT: So what we're talking about is  
24 consent. Something is either consensual or it's  
25 non-consensual.

1                   THE WITNESS: That's correct.

2                   THE COURT: So your view if a student offers  
3 another \$1,000, then that would be consensual?

4                   THE WITNESS: Under Section III of the policy.

5                   THE COURT: Okay. What if a student offers  
6 another student drugs?

7                   THE WITNESS: Again, both instances would  
8 probably be violations of Rhode Island law, but in  
9 terms of a policy violation, I don't believe that they  
10 would be a policy violation under Section III.

11                  THE COURT: Would that answer change at all, the  
12 first question about \$1,000 or the second question  
13 about the drugs, would it change at all if the offering  
14 student knew, for example, that the other student was  
15 poor, destitute, didn't have any money, came from a  
16 really poor family? Does that change your answer?

17                  THE WITNESS: No.

18                  THE COURT: Okay. Would it change your answer  
19 if he knew the other person was recovering from an  
20 addiction and offered drugs?

21                  THE WITNESS: I do not believe it would be a  
22 policy violation under Section III, your Honor.

23                  THE COURT: Okay. What if one student said to  
24 another that you can join our fraternity on the  
25 condition that you have sex with me?

1                   THE WITNESS: That sounds certainly immoral,  
2 might be a hazing violation, but I don't believe it  
3 would be a violation of Section III.

4                   THE COURT: What about if a student says to  
5 another I'll vote for you for captain of the team but  
6 you have to have sex with me?

7                   THE WITNESS: I'm not sure. Whereas if the  
8 hypothetical were if you don't have sex with me then I  
9 won't vote for you might constitute a threat.

10                  THE COURT: So that's the corollary. If you  
11 don't have sex with me then I'll vote for somebody  
12 else?

13                  THE WITNESS: That might constitute a threat,  
14 yes, your Honor.

15                  THE COURT: So the question in all of these  
16 hypotheticals, if sex occurs between the two people in  
17 any of those hypotheticals, is the sex consensual under  
18 the '14- '15 policy?

19                  THE WITNESS: I'm sorry. What was the question?  
20 I apologize.

21                  THE COURT: The question is if sex occurs  
22 between two people in any of the hypothetical examples  
23 I've given you, is that sex consensual under the  
24 '14- '15 policy?

25                  THE WITNESS: With the exception of the last

1 answer, which I'm not sure about, yes.

2 THE COURT: Okay. And you believe that is an  
3 accurate description of what the community standards of  
4 Brown as reflected in all of these materials was under  
5 the '14- '15 policy? That's what you -- that's how you  
6 interpreted all of these materials, the policy itself  
7 as well as the ancillary materials you've just been  
8 asked a bunch of questions about?

9 THE WITNESS: I'm not sure I understand your  
10 question. If you could rephrase.

11 THE COURT: What you just expressed, that all of  
12 those situations would not be a violation of the  
13 '14- '15 policy with the possible exception of the last  
14 one involving the vote for captain of the team, you  
15 believe that that is consistent with both the '14- '15  
16 policy as well as all the ancillary materials, training  
17 materials that you've been asked all these questions  
18 about?

19 THE WITNESS: I don't believe that all of those  
20 scenarios would follow the training materials  
21 precisely. However, none of them would be a violation  
22 of the 2014-2015 Code of Student Conduct Section III.

23 THE COURT: So wait a second. You think those  
24 examples could be inconsistent with the training but  
25 consistent with or not violative of the policy?

1                   THE WITNESS: I don't remember all of the  
2 examples so I was thinking of them in terms of  
3 violations of the policy because it's my contention  
4 that there were some instances of training that were  
5 not necessarily directly from the policy but rather  
6 suggestions from the Brown Health Services as to what  
7 students should do, not necessarily what would  
8 constitute a policy violation.

9                   THE COURT: Well, isn't what you learned in  
10 orientation and received as information from all the  
11 different training offices, whether it's Health  
12 Services or Title IX or Student Life, it all  
13 constitutes a reflection of what the standards are of  
14 the community, doesn't it?

15                   THE WITNESS: Yes.

16                   THE COURT: So your expectation has to be  
17 consistent, or one would think it would be consistent  
18 with not just the policy but what you're told the  
19 policy means under the standards of the University,  
20 right?

21                   THE WITNESS: I apologize. I'm not sure I  
22 followed that.

23                   THE COURT: Okay. Well, we're talking here  
24 about your expectations as a party to a contract with  
25 the University. And you have expectations that are

1 based on what's in the policy on student conduct.

2 THE WITNESS: Right.

3 THE COURT: But the attorneys have been  
4 presenting evidence of other things that reflect what  
5 that contract, what that policy means that would go  
6 into what your expectation was. Do you follow me?

7 THE WITNESS: I'm following you, yes.

8 THE COURT: So all of these things that have  
9 been made part of the evidence are what reasonably make  
10 up your expectation as to what this policy means,  
11 right?

12 THE WITNESS: I was under the understanding that  
13 the only policy violations that a student could be  
14 tried for are those in the Code of Student Conduct.

15 THE COURT: So are you saying that all of this  
16 training and the material is irrelevant if it goes  
17 beyond what you believe the language of the policy is?

18 THE WITNESS: It's certainly not irrelevant. I  
19 think it's something that students should follow but  
20 it's not a policy violation.

21 THE COURT: Okay. So I guess I'm just a little  
22 confused because you seem to be saying on one hand that  
23 the term "coercion" is -- your definition of it derives  
24 from both what's in the language of the policy, but  
25 also from the way in which that term is used or the

1 words that it is combined with in these other training  
2 materials. But then you also seem to be saying that if  
3 these training materials say something beyond what's in  
4 the language of the policy, then they don't apply or  
5 they don't matter.

6 So I'm a little confused by your answer so why  
7 don't you try to clarify that for me.

8 THE WITNESS: Sure. So my understanding is that  
9 "coercion," as I understand it, means force or the  
10 threat of force, that those two things specifically  
11 constitute policy violations at Brown University  
12 pursuant to Section III of the 2014-2015 Code of  
13 Student Conduct.

14 I've understood in this case that coercion has  
15 been used separately with a different meaning by Djuna  
16 Perkins as well others to mean manipulation or  
17 something other than the way that the Code defines  
18 violations of Section III. Meaning that Djuna Perkins  
19 used "coercion" to refer to manipulation, which is  
20 included in the 2015-2016 Title IX Policy, which was  
21 not included in the 2014-2015 Code of Student Conduct.

22 So when she referred to "coercion," she was  
23 referring to manipulation. Whereas when I used the  
24 word "coercion," or the word "coercion" was used in  
25 training materials, it was referred to, or rather I

1       perceived it to be referred to as force or the threat  
2       of force, which is consistent with the Code that we  
3       were told to follow.

4                   THE COURT: Okay. That's all I have.

5                   Do either of you wish to follow-up?

6                   MR. RICHARD: I have no questions, your Honor.

7                   MR. RATCLIFFE: No further questions.

8                   THE COURT: Okay. You can step down. Thank you  
9       very much.

10                  THE WITNESS: Yes, your Honor.

11                  THE COURT: All right. We're probably at a  
12       pretty good time to break for the day. So we can go  
13       off the record.

14                  (Discussion off the record.)

15                  (Adjourned at 4:40 p.m.)

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C E R T I F I C A T I O N

I, Anne M. Clayton, RPR, certify that the foregoing is a true and correct copy of the transcript originally filed with the clerk on August 5, 2016, and incorporating redactions of personal identifiers requested by the following attorney of record: J. Richard Ratcliffe, in accordance with the Judicial Conference policy. Redacted characters appear as a black box in the transcript.

/s/ Anne M. Clayton

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Anne M. Clayton, RPR

August 29, 2016

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Date